THE H-2 PROGRAM AND NONIMMIGRANTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

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ON

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[97th Congress]

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THE H-2 PROGRAM AND NONIMMIGRANTS

MONDAY, NOVEMBER 30, 1981

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2228, Dirksen Senate Office Building, the Honorable Alan K. Simpson (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator SIMPSON. The hearing will come to order, as we proceed with our efforts in this fascinating arena of refugee and immigration policy reform. Well, today's hearing will focus on provisions of the Immigration and Nationality Act which govern the entry and the stay of certain classes of nonimmigrants, including temporary or H-2 workers and foreign students.

We will also review the proposal to amend the INA that visas could be waived for nationals of certain countries which have a reciprocal provision for visa waiver for citizens of the United States entering their countries. And finally, we shall examine the most recent efforts of the INS in maintaining an adequate system for immigrant document control.

Such control has been I think rather conspicuously lacking in the past, with the result that nearly 50 percent of illegal immigrants now residing in the United States are visa abusers. That is a rather significant statistic. So effective nonimmigrant document control is crucial to us in the consideration of proposals which might lessen Government restrictions or regulations governing nonimmigrant admissions.

Therefore, in examining suggestions such as expanding the H-2 program or applying less restrictive regulations on employment and transfer of foreign students or waiving the visa requirement for nationals of perhaps some 30 countries, the subcommittee and this Congress must be assured that whatever limitations are placed upon these population groups can and will be enforced by the INS. If we fail in that, we may well only be aggravating the already monumental problems of illegal immigration.

So that should be an interesting one for us to gnaw on this morning. The issue as I have reflected it and the way we refer to it in the West, it is very much like bear meat: the more you chew it, the bigger it gets. [Laughter.]

And so with that, we will proceed with the agenda and the administration panel. We feel pleased to have your participation and assistance. We have in that panel: Malcolm Lovell, Under Secretary of Labor of the Department of Labor; and Alan Nelson, the Deputy Commissioner of Immigration and Naturalization Service of the Department of Justice and our new nominee for the top slot in that agency; and Mr. James Barnes, A. James Barnes, General Counsel of the Department of Agriculture.

I believe you have had expressed to you the time limitations, and if you will proceed in that order we would be most appreciative.

STATEMENT OF MALCOLM LOVELL, UNDER SECRETARY, DEPARTMENT OF LABOR, ACCOMPANIED BY KEN BELL, EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Mr. **Lovell**. Thank you very much, Mr. Chairman. I welcome the opportunity to appear before you today to discuss the Department of Labor's role in the H-2 program.

The Immigration and Nationality Act directs the Attorney General to consult with appropriate agencies of the Government prior to a determination on the petition of an employer for the importation of temporary nonimmigrant alien workers. The Attorney General, through the Immigration and Naturalization Service, promulgated regulations designating the Department of Labor as the agency of the Government to act in an advisory capacity to the INS concerning petitions filed by employers for the entry of aliens who may come temporarily to the United States to perform temporary services or labor as an H-2 nonimmigrant if unemployed persons capable of performing those services cannot be found in this country.

In accordance with Justice Department regulations, DOL issues an advisory opinion on: One, the availability of U.S. workers for temporary jobs offered to aliens; and two, whether the admission of such aliens will adversely affect the wages and working conditions of U.S. workers similarly employed.

This advisory opinion is commonly known as a labor certification. The Department of Labor issues separate regulations concerning labor certifications for H-2 agricultural and nonagricultural workers. Employers who anticipate a shortage of U.S. workers for seasonal agricultural jobs are required to file a job order and an application for certification of temporary alien labor with the nearest local office of the State employment service 80 days prior to the date of need.

The job order filed by the employer must offer prevailing wages and working conditions, including housing that meets minimum Federal health and safety standards, three meals per day, which cannot exceed a specified cost, and transportation or reimbursement for the cost of transportation to the worker after completion of 50 percent of the period of employment.

If the worker stays for the entire harvest, the employer must pay the cost of return transportation.

Certification requirements for nonagricultural employment are less structured in order to take into consideration a spectrum of occupations ranging from entertainers to aerospace engineers.

The Department makes determinations on the availability of domestic agricultural workers after extensive recruitment efforts have been conducted by the State employment services for a period of 60 days through the local and interstate recruitment system. Employers are also required to recruit U.S. workers on their own, including advertising in local newspapers.

The Department's Employment and Training Administration regional offices have authority to design recruitment procedures for determining availability of U.S. workers for temporary nonagricultural jobs, taking into account the occupation and local labor market conditions.

In general, extensive recruitment is not required for most applications where local labor market information is available. However, in occupations where there is a national labor market or where the application is for multiple openings, the employer may be required to conduct extensive recruitment, including advertising, use of the interstate clearance system, and contacts with appropriate unions or associations.

The Department issues certifications for temporary alien employment if U.S. workers are unavailable and would not be adversely affected. An employer whose application for temporary alien agricultural workers is denied may request an expedited administrative review by a Department of Labor hearing officer.

Once having obtained a labor certification and an approved petition from INS, the employer decides from which country to recruit foreign workers. Today Jamaica is the major supply country for H-2 workers in agriculture. About 8,700 Jamaicans and other British West Indians are employed each year in the Florida sugar cane harvest, and some 5,000 to 6,000 work in the East Coast apple harvest. About 1,000 Mexicans have been employed during the past two seasons in the Virginia tobacco harvest, and nearly the same number of aliens from Mexico, Spain and Peru are employed annually as sheepherders in the West. Another 1,000 aliens from Canada work in the woods industry of New England. In 1980, a total of 18,371 H-2 farm workers were certified.

Nearly 25,000 temporary non-agricultural workers were certified in 1980. More than half are employed in four major occupational categories: entertainment, engineering, sports, and construction.

While numerically unrestricted, the H-2 program has brought an average of only some 30,000 foreign workers into the United States in recent years. Nonetheless, this program has always been a controversial one. It should be recognized, however, that the program is controversial because the H-2 provision mandates the balancing of conflicting goals of assuring employers of short term workers of an adequate labor force on the one hand, and protecting the jobs of citizens on the other.

As a recent court decision noted: "Any statutory scheme with these two proposals must inevitably strike a balance between the two goals. Clearly, citizen workers would best be protected and assured high wages if no aliens were allowed to enter. Conversely, elimination of all restrictions upon entry would most effectively provide employers with an ample labor force."

The regulations implementing the H-2 provision, especially as they pertain to farm workers, are therefore also inevitably troublesome and technically complex for both employer and worker groups. The Department has therefore long been involved in attempts to both streamline and to strengthen H-2 procedures, and consults frequently with affected groups and scholars.

To assist us in our efforts to administer a more effective program, the Department has recently established an inter-agency working group with the Departments of Justice and Agriculture. Administrative issues to be considered by this working group include: A review of recent farm worker and grower concerns about the impact on agriculture of employer sanctions and a legalization program; the concerns of employer and worker groups with the requirements for housing, transportation, and the provision of daily meals; and our method of calculating the adverse effect wage rate for farm workers.

This concludes my prepared statement. I am accompanied here by Ken Bell of the Department's Employment and Training Administration if there are any questions.

Senator SIMPSON. Thank you very much, Mr. Lovell.

[The prepared statement of Malcolm Lovell follows:]

PREPARED STATEMENT OF MALCOLM LOVELL

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before you today to discuss the Department of Labor's role in the "H-2" program, whereby employers may temporarily import aliens to perform temporary services or labor if unemployed persons capable of performing those services cannot be found in this country. I am accompanied by Ken Bell of the Department's Employment and Training Administration.

Legislative Authority

The Immigration and Nationality Act (INA) conveys responsibility for decisions on the numerically unrestricted temporary admission of an alien for temporary employment in the United States to the Attorney General. The INA directs the Attorney General to consult with appropriate agencies of the Government prior to a determination on the petition of an employer for the importation of temporary nonimmigrant alien workers. The Attorney General, through the Immigration and Naturalization Service (INS), promulgated regulations designating the Department of Labor (DOL) as the agency of the Government to act in an advisory capacity to the INS concerning petitions filed by employers for the entry of aliens who come temporarily to the U.S. to perform temporary services or labor under the provisions of section 101(a)(15)(H)(ii) of the INA. In accordance with Justice Department regulations, DOL issues an advisory opinion on (1) the availability of U.S. workers for temporary jobs offered to aliens and (2) whether the admission of such aliens will adversely affect the wages and working conditions of U.S. workers similarly employed. This advisory opinion is commonly known as a labor certification. This Department administers the H-2 labor certification program through the regulatory process.

Department of Labor Regulations

The Department of Labor issues regulations concerning labor certifications for temporary nonimmigrant, agriculture and non-agriculture, workers under the authority of regulations issued by the Justice Department (8 CFR 214.2). Employers who anticipate a shortage of U.S. workers for seasonal agricultural jobs are required by our regulations (20 CFR 655) to file a job order and an application for certification of temporary alien labor with the nearest local office of the State employment service 80 days prior to the date of need. This 80 day period includes 60 days for the employment service system to recruit U.S. workers and 20 days for the employer to file a petition with INS and to arrange for the entry of alien workers or to appeal a denial of certification. The job order filed by the employer must offer prevailing wages and working conditions, including housing that meets minimum Federal health and safety standards, three meals per day which cannot exceed a specified cost, and transportation or reimbursement for the cost of transportation to the worker after completion of 50 percent of the period of employment. If the worker stays for the entire harvest, the employer must pay the cost of return transportation. Certification requirements for nonagricultural employment (20 CFR 621) are less structured in order to take into consideration a spectrum of occupations ranging from entertainers to aerospace engineers.

-- Availability of U.S. Workers

This Department makes determinations on the availability of domestic agricultural workers after extensive recruitment efforts have been conducted by the State employment services (SESAs) for a period of 60 days through the local, State and inter-State recruitment system. Employers are also required to recruit U.S. workers on their own, including advertising in local newspapers.

The Department's Employment and Training Administration regional offices have authority to design recruitment procedures for determining availability of U.S. workers for temporary non-agricultural jobs, taking into account the occuption and local labor market conditions. In general, extensive recruitment is not required for most applications where local labor market information is available. However, in occupations where there is a national labor market or where the application is for multiple openings, the employer may be required to conduct extensive recruitment, including advertising, use of the inter-State clearance system, and contacts with appropriate unions or associations.

-- Adverse Effect on Wages and Working Conditions

To assure that alien labor does not adversely affect the wages of U.S. workers, agricultural employers are required to offer and to pay the prevailing wage, the adverse effect wage rate or the Federal, State or local minimum wage, whichever is higher. The adequacy of other aspects of employment, such as the provision of family housing and payment of transportation in advance, is determined by prevailing practices in the area of employment. The application of prevailing wages and working conditions for temporary non-agricultural workers has proven to be an adequate method of protecting wages and working conditions of non-agricultural U.S. workers.

-- Issuance of Temporary Labor Certification

If the recruitment efforts conducted by SESAs and employers fail to produce the number of workers needed, the Department issues certifications for temporary alien employment. An employer whose application for temporary alien agricultural workers is denied may request an expedited administrative review by a Department of Labor hearing officer (Administrative Law Judge). Also, all employers, both agricultural and non-agricultural, may appeal a denial of certification directly to the INS.

Historical Perspective

Prior to the passage of the INA in 1952, temporary foreign workers were excluded from the U.S. Wartime farm labor shortages led, however, to the creation of foreign worker programs during World Wars I and II primarily under the authority of bilateral agreements with foreign Nations. The principal origins of foreign workers were Mexico and the British West Indies. During World War II British West Indians (BWIs) were employed extensively in harvesting sugar cane in Florida and picking fruit and vegetables on the East Coast. Under the much larger "bracero program", close to 5 million Mexican workers entered the U.S. for employment, principally in Southwest agriculture. At the height of the program in 1956, about 450,000 Mexicans were working in agriculture in the U.S.

Employers using BWI farmworkers switched to the H-2 program when the INA was enacted. The bracero program, however, continued to operate under a bilateral agreement with Mexico and under an amendment to the Agricultural Act of 1949 (P.L. 81-78, July 12, 1951). This highly controversial program was terminated in 1964.

Current Program

Once having obtained a labor certification and an approved petition from INS, an employer decides from which country to recruit foreign workers. Today, Jamaica is the major supply country for H-2 workers in agriculture. About 8,700 Jamaicans and other British West Indians are employed each year in the Florida sugar cane harvest, and some 5,000 to 6,000 work in the East Coast Apple harvest. About 1,000 Mexicans have been employed during the past two seasons in the Virginia tobacco harvest, and nearly the same number of aliens from Mexico, Spain and Peru are employed annually as sheepherders in the West. Another 1,000 aliens from Canada work in the woods industry of New England.

Over the period 1971-1980 the number of H-2 workers certified in agriculture ranged from a high of 21,893 in 1971 to a low of 15,231 in 1976. In 1980, 18,371 workers were certified. While firm data on 1981 are not yet available, it is anticipated that the numbers may be slightly lower than 1980 because of a decrease in apple production by employers of H-2 workers along the East Coast.

Nearly 25,000 temporary nonagricultural workers were certified in 1980. More than half of the nonagricultural H-2 workers are employed in four major occuptional categories: entertainers (about 3,700), engineers (about 1,800), sports (about 2,000) and construction (about 6,200). Although the national origins of nonagricultural H-2 workers are extremely diverse and vary from year to year, in 1978 most non-agricultural H-2 workers were citizens from Canada, Japan, Mexico and the Philippines.

Current Concerns

While numerically unrestricted, the H-2 program has recently brought an average of only some 30,000 foreign workers into the U.S. at a time when we have a total labor force of 105 million, including a hired farm labor force of 2.7 million. Nonetheless, this program has always been a controversial one. It should be recognized, however, that the program is necessarily controversial because the H-2 provision mandates the balancing of conflicting goals. That is, as a recent Federal circuit court decision stated: "The common purposes are to assure [employers of short-term workers] an adequate labor force on the one hand and to protect the jobs of citizens on the other. Any statutory scheme with these two proposals must inevitably strike a balance between the two goals. Clearly, citizen workers would best be protected and assured high wages if no aliens were allowed to enter. Conversely, elimination of all restrictions upon entry would most effectively provide employers with an ample labor force." [Rogers v. Larson, 563 F.2d 617, 626 (3rd Cir. 1977)]

The regulations implementing the H-2 provision, especially as they pertain to farmworkers, are therefore also inevitably troublesome and technically complex for both employer and worker groups. The Department has, therefore, long been involved in attempts to both streamline and to strengthen H-2 procedures, and consults frequently with affected groups and interested scholars on such issues as developing a better methodology to establish the adverse effect wage rates (AEWR) for H-2 farmworkers. To assist us in our efforts to administer a more effective program, the Department has recently established an inter-agency working group with the Departments of Justice and Agriculture. Administrative issues to be considered by this working group include: a review of recent farmworker and grower concerns about the impact on agriculture of employer sanctions and a legalization program; the concerns of employer and worker groups with the requirements for housing, transportation and the provision of daily meals; and the impact on the current AEWR methodology of the reduction in the Agriculture Department's farm labor statistical series.

This concludes my prepared statement. I will now be pleased to answer any questions you may have.

Senator SIMPSON. And now Mr. Nelson, please.

STATEMENT OF ALAN NELSON, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Mr. NELSON. Thank you; Mr. Chairman.

Likewise, I am pleased to join the committee again as we proceed with the hearings. I will submit our written statement if I may, also, which largely parallels the comments Mr. Lovell made.

I might just read into the record the definition of the H-2 worker as set forth in the Immigration and Nationality Act as being "an alien having a residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform other temporary services or labor if unemployed persons capable of performing such services or labor cannot be found in this country.'

As Mr. Lovell pointed out, the Attorney General is given basic control, which has been largely delegated to the Department of Labor, to set forth the appropriate procedures. We believe this cooperative system between the Department of Labor and the Department of Justice is an effective system and one that should be continued.

In fiscal year 1980, there were an estimated 30,000 individuals who entered the United States as H-2 workers, and most of those in agriculture. As we know, there are no quantitative limits placed upon H-2 admissions and the trend in recent years seems to indicate a gradual rise in the numbers.

We have testified previously, of course, on the administration's temporary Mexican worker program. I will note just a couple of the basic differences Under the administration's new program the State Governors have a key role in determining the shortages and the application of the program, and also there is a greater freedom of the workers under the administration program to change jobs.

The basic administration view as we have testified before, is that we do not propose specific changes to the H-2 program, but that it should continue. In addition, having it exist along with the new experimental program, having two paths, is an effective way to test the new temporary worker program.

There has been questions as to abuses in the H-2 program, of workers not leaving. We think the facts do not indicate that. There have only been a few situations where that has been a problem, and in a great majority the H-2 workers do return to their countries of origin.

And we do believe with passage of the employer sanctions legislation we would even anticipate less H-2 visa abuse, since the opportunities for employment would be drastically reduced.

And in closing I would like to ratify Mr. Lovell's comments in closing about the Departments of Labor, Justice, and Agriculture joining together in this work group to discuss and analyze possible modifications of the H-2 regulations and procedures that will in fact strengthen and improve that program.

That concludes my remarks, Senator. I would be happy to answer questions.

Senator **Simpson**. Thank you very much, Mr. Nelson.
Now Mr. Barnes, please.

STATEMENT OF A. JAMES BARNES, GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. **Barnes**. Thank you, Mr. Chairman. We too appreciate the opportunity to again participate, along with the other representatives of the administration. And I will just briefly summarize some of our main concerns about the subject of the hearing this morning, the H-2 program, and then submit my testimony for the record.

As you are aware, the primary interest of the Department of Agriculture in this issue is to assure that as an immigration control program is implemented there not be a serious disruptive effect on the agricultural sector, and we believe that, given the significant number of aliens currently employed in agriculture and the seasonal use of those aliens, there is the potential for such disruption.

And I think that the H-2 program takes on particular significance because it is difficult to say exactly how many of the current alien work force would be eligible for and seek resident status under the legalization program, and it is also difficult to project the extent to which the proposed temporary worker program would provide labor for agriculture's needs.

We believe that the H-2 program is well suited to serving as a safety valve to meet the multi-seasonal agricultural labor demands that cannot be met from the domestic labor supply. We see it as a flexible system that allows the Government, working with employers, to bring specified numbers of foreign workers to the United States, when needed, to perform specific jobs, and then to return them to their homes when the work is completed.

We think that the overall experience of our country with the H-2 program shows that it can be successful in meeting agriculture's specific needs, while not displacing domestic workers or not undercutting domestic wages. At the same time the safeguards built into the current H-2 program guarantees that the work force is treated humanely. In addition the H-2 program has been successful in generally having the workers return to their homes at the completion of their employment.

We believe that it is critical that an H-2 program continue in place. We are particularly pleased with the agreement that has been worked out with the Departments of Labor and Justice to have an interagency task force that we would supplement with representatives of outside groups to step up to some of the questions that are involved in having an H-2 program. The interagency task force would try to determine whether there may be dislocations to agriculture, how many H-2 workers might be needed, and what changes in the H-2 program might be made.

I now would conclude my opening remarks, and of course would be happy to respond to any questions you may have.

[The prepared statement of Mr. Barnes follows:]

PREPARED STATEMENT OF A. JAMES BARNES

I appreciate the opportunity to testify on behalf of the Department of Agriculture concerning the H-2 program. In our earlier testimony before this subcommittee we indicated that from the perspective of the U.S.D.A. and agriculture producers, continuation of an H-2 Program is a critical component of the Administration's immigration control package. The other components of the package that most directly affect agriculture are, of course, the legalization provisions, the guestworker program and employer sanctions.

We strongly support the effort to gain control over our nation's borders and our primary interest in participating in the Administration's Task Force on Immigration and in the series of hearings you have been holding is to assure that as an immigration control program is implemented there is not a serious disruptive effect on the agricultural sector. Given the significant number of aliens currently employed in agriculture, and the seasonal use of those aliens, there is the potential for such disruption. However, we believe that the Administration's package, particularly the continuation of an H-2 Program, offers a reasonable assurance that adequate numbers of legal workers will be available.

The availability of the H-2 Program takes on particular significance because it is very difficult to determine exactly how many of the current alien workforce will be eligible for, and seek resident status under, the legalization program. It is also difficult to project the extent to which the temporary worker program will actually provide workers for agriculture at the time and place they are needed. Finally, over time there will be changes in the nature and scope of the need for agricultural workers to supplement the domestic workforce. Some of the current migrant workforce will find full-time employment in agriculture, others may find employment in other sectors. And, there will be changes in the mix of crops and the seasonal workforce that is required to harvest them.

An H-2 Program is well suited to serving as a safety valve to multi-seasonal agricultural labor demands that cannot be met from the domestic labor supply. It is a flexible system that allows the government, working with the employers, to bring a specified number of foreign workers to the United States when needed to perform specific jobs and to return them to their homes when the work is completed. We believe that the experience with the H-2 Program shows that it can be successful in satisfying a labor need while not displacing domestic workers, in not undercutting domestic wages, in having the workforce treated humanly, and in having the workers return to their homes at the completion of their employment. In sum, it is a program that is designed to address specific labor shortage situations and to provide a solution no broader than that necessary to meet the specific need.

Some questions have been raised about where the dislocations to agriculture will occur, how many H-2 workers may be needed, and whether changes in the H-2 Program are desirable. As my colleague from the Labor Department has indicated, we have formed an interagency task group to address these specific questions, using the resources of the Department of Labor, Justice and Agriculture. In addition, we intend to involve representatives of agriculture producers, labor organizations, and ethnic groups as appropriate.

The immigration control problem has almost an infinite number of facets, thus making it particularly difficult to fashion an effective, acceptable program to deal with it. We believe that the potential problems posed to the agricultural sector by a control program can be addressed and workable solutions arrived at within the confines of the Administration's program--and that it is important that an H-2 type program be left in place to help reach that solution.

I will be happy to respond to any questions you may have.

Senator SIMPSON. Thank you very much, Mr. Barnes.

It is good to hear the testimony of the three of you in this H-2 issue. The H-2 program and the streamlining of it was suggested by the Select Commission. We did not, when I served on that Commission, define what "streamlining" meant, and now that is what we are probing here, is to what method to use.

And now of course, too, also considering it as part of, a very important part of the transition between the legalization effort and a temporary worker program, and that is a very important role that we want to pursue and see where it gets there.

So let me ask several questions. Mr. Lovell, in this issue of streamlining, has the administration proposed any specific steps to streamline the H-2 program certification requirements in order to expedite needed workers during the period that the reforms against illegal immigration are being instituted?

Mr. LOVELL. We do not have recommendations at the moment. Our interagency group is working on that and we hope to have some recommendations by early spring.

Senator SIMPSON. By?

Mr. LOVELL. By early spring of 1982.

Senator SIMPSON. Does the administration believe that the regulations that govern this current AEWR, the adverse effect wage rate, which we are going to get into later in the day—it is commented on by several sources, that particular mode.

Does the administration believe that the regulations governing the current adverse effect wage rates should be modified in any way to protect U.S. workers? And if so, how would that be?

Mr. LOVELL. Well, it is going to have to be modified anyway, because the data we have been using will no longer be available, because the Department of Agriculture Farm Labor Surveys which we have used to calculate the adverse effect wage rates are being substantially cut back. But we will be looking at new methods which hopefully will speed the process, as well as use a different data base.

Senator SIMPSON. Is it true, as we pursue that issue of the adverse effect wage rate, that that is calculated only for agriculture, while the other industries may simply pay the "prevailing wage rate"? And if so, what is that justification for that?

Mr. LOVELL. Well, the studies that we have made indicate where H-2 agricultural workers have been employed on a regular basis, it has had a depressing effect on wages, which is not true of the nonagricultural workers; who have historically been very few in numbers and dispersed throughout the labor market in terms of both occupation and geographical location. And therefore the adverse effect wage rate is an effort to make sure that indeed these H-2 workers do not depress the wage rates for American workers in those occupations.

Senator SIMPSON. We will be pursuing that to see whether that is the case.

I will bounce around a little to the other members of the administration panel. I know that Mr. Nelson at the INS is really not as deeply involved in this particular issue as perhaps other agencies of the Federal Government. I know that might be a curious statement for some to realize, but it is true.

And yet, I was interested in your numbers. If you could—perhaps the Department of Labor, perhaps Mr. Lovell can answer better. But there was a certification of about 43,000 and 66 separate positions were certified. And yet an estimated 30,000 individuals entered as H-2 workers.

What is the reason for that discrepancy in numbers? Is it duplication or what is that?

Mr. **Nelson**. As I understand it, Mr. Chairman—and again, the other members might know it better—it is that the discrepancy is not really a true gap, in that there can be multiple engagements. So that a person could be signed up for several jobs or whatever.

So I think the fact there are 43,000 certifications and 30,000 actually came did not mean that 13,000 applied and did not come; probably that there were duplicate jobs. That is our understanding, so that there really in fact is not much of a gap between those certified and those who actually come.

Senator **Simpson**. So it is in your mind a duplication?

Mr. **Nelson**. Yes, I believe that is basically correct.

Senator **Simpson**. We are advised that there are very few H-2 workers that slip into illegal status. What statistics do you have that you could share with us on that? What measures, then too, if I might ask, does the INS have to record that H-2 workers have in fact returned at the end of their work period?

Mr. **Nelson**. As I understand it, there have been a few examples, I believe Guam is one and one other location, where there have been some problems with some select workers from certain countries not returning. But other than that, most have.

As far as the control mechanism, I am not sure of the exact process. We do keep an exit control record, and to the extent that we are aware of the problems visa abusers, of course, will not be eligible for the program in the future. But I believe that as part of the normal working relationship with the employers, they do depart and don't drop out. I am sorry I do not have more specifics on that and we can certainly provide it.

Senator **Simpson**. If you would, that would be helpful.

Mr. Barnes, do you feel that the legalization and the temporary worker programs, which of course are things we have been discussing throughout this review of this issue, especially those as proposed by the administration, do you think that those, if enacted, those programs will provide a sufficient number of legal workers for agriculture to replace the illegal aliens which are currently employed in agriculture?

And what size labor shortfall might we expect there? And is that going to be of long term, or a long-term or short-term disruption of our agricultural economic sector? What can you tell us about that disruption?

Mr. **Barnes**. Mr. Chairman, I think there are in our minds some questions as to whether the legalization and guest worker programs would provide the same number of legal workers for agriculture to replace the number of illegals currently working there. As we had discussed with the committee previously, it is our guess that somewhere between 300,000 and 500,000 illegal aliens are currently employed on a seasonal basis in agriculture. So we see at least some potential for a shortfall in the number of workers available to the agricultural sector.

I think at this point it is extremely difficult to try to put an exact figure on what that shortfall might be. We really do not know how many of the current illegals in the country are going to one, be eligible for legalization, and two, go forward and apply.

As was discussed in some of the previous hearings, while other countries have had legalization programs, we have not been able to acquire from those experiences any strong indication as to what number of those eligible for legalization in this country will ultimately seek legalization.

In our view, it is important to have a mechanism such as the H-2 program that could step up and come into play and address a short-term shortfall if it developed. I think if we do not have a mechanism like H-2 available then what we face are either employers shifting the kind of crops that they are producing, either with the result that the production of those crops would go to other countries or we might see a kind of a vacuum in this country, where illegals would continue to be drawn into the country to fill that unfulfilled labor need.

So again, we see the H-2 program as a critical kind of safety valve to address whatever shortfall might develop. We are somewhat reluctant to try to put a number on it. I think numbers raise red flags and concern, and I think the approach that the administration is suggesting of trying to work with Labor and Justice to very carefully ascertain what that shortfall might be and target relief is an appropriate way to go.

Senator SIMPSON. Let me ask you this. If the choice were between the temporary worker program or a H-2 program, a streamlined H-2 program, which would be the better vehicle for meeting the shortfall in the domestic supply of labor for agriculture?

Mr. BARNES. I think from Agriculture's perspective the H-2 program is a much more desirable vehicle. We have got some experience with it. We know, in contrast to the proposed temporary worker program, which would be under the control of the Governors, where the numbers are smaller, where there would be flexibility to change employers, it really is not as well designed or ideally designed to provide specific workers for a specific time period to fill a specific job need, as the H-2 program is.

Senator SIMPSON. And of course, the question often asked by the layman that observes this program is, given the national unemployment rate, why do we need to even consider using foreign workers in agriculture? That question, believe it or not, is still asked. And of course, is the H-2 program simply a means for farmers to obtain low-cost workers to work under conditions not acceptable to the domestic labor force? And are there really economic benefits derived from hiring H-2 workers as opposed to domestic migrants for agriculture?

How do you address those?

Mr. BARNES. With respect to the first part of your question, Mr. Chairman, I believe that the jobs that are available in the agricultural sector that are currently being filled by aliens tend to be short-term seasonal employment that involve different skills than many of our unemployed in this country have. The jobs are frequently in parts of the country or places where people are not willing to travel for short periods of time to pick up those jobs.

And I think when we see with the H-2 program, which looks first to see whether there are domestic workers and only permits the entrance of alien workers when you are satisfied that there are not domestic workers that are going to be available to fill specific jobs, I think that is an appropriate approach to the problem, to make sure, as I think we all on this panel believe, that we ought to be first trying to utilize the domestic workers.

With respect to the second half of your question, as to whether the H-2 program is simply a means of getting low cost workers, our belief is that it is not; that the experience of the agricultural producers is that in fact the H-2 workers cost the employer more than domestic workers do.

And our economic research service, for example, recently did a comparison between the cost to Virginia tobacco farmers, who recently have begun using H-2 workers, and North Carolina farmers, who use domestic labor; and found that the Virginia farmers were incurring a cost of about $6.31 an hour compared to about $3.68, which is what the North Carolina farmers were incurring using domestic labor.

So I think if anything there is probably a financial disincentive against use of the H-2 workers, but that the real bottom line of the agricultural sector is they need the labor there to do the job.

On the comparison I referenced from the economic research service, we would be glad to provide the detail on that to the committee if that would be helpful.

Senator **Simpson**. If you would.

[The material referred to follows:]

Cost Differentials Between Domestic Crop Workers and H-2 Workers in Virginia Working on Tobacco Farms

In 1981, about 345 tobacco growers in the Danville-South Hill area of Virginia employed slightly over 1,000 workers from Mexico under the H-2 Program. The total cost of employing H-2 workers include wage and non -wage benefits. The minimum wage rate paid the H-2 workers in 1981 was the adverse effect wage rate (AEWR) established by the U.S. Department of Labor at $3.81 per hour. The workers worked an average of about 890 hours on the tobacco farms and their total wages averaged $3,391.02.

Employers of H-2 workers are required to pay round-trip transportation costs for workers and provide free housing for them while they are employed. Employers must also provide employees 3 meals per day, but they may charge the workers up to $5.00per day for the meals. If the cost of providing meals was greater than the amount the employer could charge, the employer had to absorb the additional cost. The total non-wage costs of employing H-2 workers in Virginia tobacco production in 1981 was $2,225 per worker. Spreading this cost over the 890 hours the workers actually worked in 1981 yielded a non-wage cost of $2.50 per hour worked. The total wage and non-wage cost of employing H-2 workers in 1981 was about $6.31 per hour.

These cost estimates are based on data provided the U.S. Department of Agriculture by S. Steven Karalekas, Attorney, on the behalf of the Virginia-Carolina Agricultural Producers Association of South Hill, Virginia and the Virginia Agricultural Growers Association of Danville, Virginia.

Crop workers in the State of Virginia were paid the minimum wage of $3.35 in 1981. Using the same data base used to estimate the wages for the H-2 workers in the Danville-South Hill area, a domestic worker earning $3.35 an hour and working the whole tobacco season (890 hours) would earn a total of $2,981.50. The domestic worker makes $.46 less per hour than an H-2 worker on wages alone. When this $.46 an hour is added to the $2.50 hourly non-wage costs associated with an H-2 worker, an employer must spend $2.96 more per hour for an H-2 worker than for a domestic worker.

Senator **Simpson**. What you pointed out as the deficiencies, or at least some of the drawbacks, with regard to the adverse effect wage rate and how that works, actually we are going to pursue that at a later time, too.

Mr. **Barnes**. That certainly is part of it, Senator, and then the fact that the employer is required to pay transportation costs, housing and food costs, contribute to the differential.

Senator **Simpson**. Let me ask one other question that is rather puzzling to me as I pursue this. We find it rather remarkable that illegal foreign workers are in many cases concentrated in the harvest of certain crops. And for example, we might find that the same farmer in California might have a totally legal work force working in lettuce and table grapes, while in the next field working for the same individual, working in raisins or olives, the harvest force will be predominantly illegal.

Do you have any insight as to why foreign workers are concentrated in the harvest of certain crops in this peculiar legality versus illegality issue of certain crops?

Mr. **Barnes**. I am not sure I have a full answer there, and certainly some of the producer groups who will be testifying later might have some insight. But I do know there are differences between workers as to what crops they prefer to work and whether they have the skills to do them. And I understand that the skills that are involved in, say, picking fruit may differ significantly from those that harvest tomatoes or lettuce or some of the other vegetable crops.

There may also be some inherent differences between which of those groups of people have tended to stay in the country and which ones have, when they have come in, either gone back to Mexico or perhaps migrated up the labor stream into full-time employment, perhaps in other sectors.

But I do not have a real good explanation for that phenomenon.

Senator **Simpson**. Mr. Lovell, I might ask, how many additional workers would you believe or foresee being admitted to the United States under any streamlined H-2 program if the employer demand for alien workers were to remain the same as at the present time?

Mr. **Lovell**. I think it would be very difficult to estimate how many additional workers would be required. I think in total there would be fewer people coming in from foreign countries than are coming in now. I think that the total would be reduced by restricting the number of illegals.

So I do not think under any circumstances, especially since the illegals already here would be granted amnesty, that you would be increasing the total number of people coming in. I think you would be decreasing the total number coming in. But by what figure I just have no idea.

Senator **Simpson**. What is the administration's position on requiring the H-2 employer to pay social security and unemployment compensation taxes? Would they be required to pay those, make those payments for the 50,000 temporary workers under the administration's proposed pilot program?

Mr. **Lovell**. Yes, they would. But we are not in favor of changing the present H-2 regulations which, as has been pointed out, are already quite costly in their provisions for transportation and housing and food, and with a higher adverse effect rate.

Senator **SIMPSON**. What do your Department's statistics show? Some witnesses have alleged in testimony that areas where the H-2 workers have been employed for some time consistently have more depressed wages than areas within the same State and industry where H-2 workers were not hired.

Mr. **LOVELL**. That is why we do set a higher adverse effect rate, to deal with that phenomenon.

Senator **SIMPSON**. Have you had a lot of controversy with regard to that AEWR theory? We received testimony and evidence that it is inequitably effected.

Mr. **LOVELL**. Well, as I indicated in my testimony, this is a controversial program because it has mixed objectives. The employer obviously is interested in a reasonable supply of labor at reasonable cost, and worker groups are interested in maintaining wage rates as high as possible. So there are those conflicting demands.

I think what we have done is to try to deal equitably with the concerns of both the growers and the workers. That has certainly been our objective. But it is really impossible to please both groups completely because of the conflicting nature of their interests.

Senator **SIMPSON**. I would share in that view.

What is your comment on the proposal, which is being presented with more vigor each time, to streamline the H-2 certification process by limiting the domestic recruitment to the area of the intended employment?

Mr. **LOVELL**. Well, I think that, depending upon what the crop is in the agricultural field—are you talking about the agricultural field?

Senator **SIMPSON**. Yes.

Mr. **LOVELL**. As you know, part of the local recruitment really deals with the migrant stream. The people who would be coming from the domestic work force might not live in the local area. They might come from the other areas of the country.

So those are some of the problems you have to balance in terms of strictly local recruiting.

Senator **SIMPSON**. One other question. How do you respond to those who state that the focal point of any H-2 reform should be to encourage and insure that recruitment of U.S. workers begins at an earlier time, while the U.S. migrant might even be reached at his home base State? How do you respond to that?

Mr. **LOVELL**. Well, there is an 80-day period, which is really quite a long period. I am not really sure that increasing that period of recruitment would be that valuable. But this is one of the issues that we are looking at. If you make it too long a period, it really becomes excessively burdensome and it is very hard for the employer to accurately forecast how many people he is going to need. If you have to put the order in too early, you do not know what the state of the crops are all going to be.

On the other hand, if the time is too short then you have unreasonable constraints on the recruitment effort.

Senator **SIMPSON**. Is it 80 days for agriculture or 60 days right now?

Mr. **Lovell**. It is 80. The first 60 days is in the domestic recruiting and then 20 days for the recruiting of the foreign workers. So the orders are placed 80 days before the workers arrive.

Senator **Simpson**. Mr. Nelson, just a couple more. What is the administration's position on requiring the U.S. Government to become involved in the recruitment of foreign workers, as they were at one point in our history, at least? What are your thoughts on that? Has there been any comment on that?

Mr. **Nelson**. I think, Mr. Chairman, that philosophically and I would think also practically that the administration would not favor significant Government involvement in recruiting, but properly leave that to the private sector to pursue.

If I might, Mr. Chairman, could I comment on an earlier question that you had to Mr. Barnes, to maybe supplement that? And I am sure I can speak for all of us on the administration. The question basically comparing the H–2 and the temporary worker program. "If you had to take one which would you take?" And I think we ought to be clear on the record. Certainly the administration does not feel it ought to be an either-or choice, but that both are properly the subject of legislation or continued operation, H–2 being continued and streamlined as we are talking about through regulatory and administrative action, and to implement the temporary Mexican worker program.

One of the key reasons that the H–2 program, for one reason or another, has not really done much with respect to Mexican labor is very few Mexicans have come in under that program, while the administration's temporary worker program of course is specifically geared to Mexicans only. And that is a need we think is important.

But beyond that, again it is an experimental program and it is a minimally regulated program, as indicated, using the Governor in that determination, and we think that is an important comparison with the H–2, which has the problem maybe of being overregulated. And while we can improve that, this is good as an additional approach, and we definitely feel as the administration position that we need both the H–2 and temporary Mexican worker programs.

Senator **Simpson**. Well, since you favor both of those, how about throwing the third one in and if, when we get to the issue of legalization, would not you think that would add to meeting the shortfall?

Mr. **Nelson**. The legalization program, yes, we think it would.

Senator **Simpson**. So there are three methods there that might help us over that shortfall.

Mr. **Nelson**. That is correct, sir.

Senator **Simpson**. Just one other question, Mr. Nelson. As someone has suggested or others have suggested that the administration—well, I would ask, has the administration considered the recommendation by some agricultural employees—or employers, rather—that the labor market test be shifted from the Department of Labor to the Department of Agriculture? And if so, what is the administration's position on that?

Mr. **Nelson**. Since I am sandwiched between those two Departments, I had better not answer that or I will be in trouble. [Laughter.]

I think I know that proposal has been made, Mr. Chairman, by agricultural interests. That is certainly hard to say. We would like to think we are a cooperative and effective administration, and there are probably pros and cons on many jurisdictional questions. So I could not really render an opinion on it.

We do feel that the working relationship has been effective with the Department of Labor, I think as both Mr. Lovell and Mr. Barnes have mentioned, with this working group formed now on the H-2 program; that we can see a very effective joint working relationship.

So I am not sure that a jurisdictional switch would necessarily solve the problem, to the extent there are problems in that area.

Senator SIMPSON. Well, I thank you all very much. And I commend you, Mr. Nelson, as you hopefully embark on your new task. And we look forward to you confirmation hearings as Commissioner of the Immigration and Naturalization Service, which will be the fullest plate of anyone here when you assume that activity. And I thank you. You have been very helpful.

Thank you, Mr. Lovell and Mr. Barnes, all of you.

Now, the next panel is an employers panel on the H-2 program, consisting of: Mr. Ashton Hart, president of the National Council of Agricultural Employers; George F. Sorn of the Florida Fruit, and Vegetable Association; and then my good colleague from Wyoming, Don Etchepare, president of the Western Range Association; and Russell Williams, president of the Agricultural Producers; and Kenneth Rolston, president of the American Pulpwood Association.

We are very pleased to have you gentlemen here, and if you would please proceed in the order listed on the agenda: Mr. Hart, Sorn, Etchepare, Williams, and Rolston. And you do of course recognize the time limitations and this mysterious gadget in front of me. Thank you. Please proceed, Mr. Hart.

STATEMENT OF ASHTON W. HART, PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

Mr. HART. Thank you, Mr. Chairman.

The NCAE represents growers of food and fiber in 39 States across America, most of which have excess areas of labor intensive demand during harvest operations. Hand harvest labor is a fact of agricultural life in those areas and will be for the foreseeable future.

At least 21 States in America have required the services of H-2 temporary foreign workers to fill a labor void. Some east coast States have documented a need for H-2's on an annual basis for almost 40 years. The H-2 program authorized by the Immigration and Nationality Act provides an if-needed backup system whereby ag employers can obtain needed workers when domestic sources are insufficient to meet demand.

H-2 has no magnetic lure for American agricultural employers. On the contrary, it is tightly regulated, it is time and paperwork consuming and it is very expensive when compared to the domestic labor market.

The H-2 program has not been utilized in excess. In 1979 H-2 worker positions certified by the DOL were less than 1 percent of the total U.S. hired farm worker force. Although the numbers of H-2 workers in agriculture may be small, they represent a major factor in the areas and crops where they are utilized.

For their part, H-2 workers have free choice in accepting their job responsibility and direct access to a liaison staff committed to their welfare in matters of employment.

NCAE agrees with the recommendations of the Select Commission on Immigration and Refugee Policy that the H-2 program be continued and improved by streamlining the application and certification process. NCAE recommends the following changes in the H-2 program:

First, change the Immigration and Nationality Act section 1101(a)(15)(h)(ii) to "at the time and place of need" for employment for recruiting purposes.

Two, reduce the number of days a job order is in the employment service system to 30.

Three, abolish the adverse effect wage rate.

Four, abolish the requirements for free housing and a ceiling on board charges.

Five, simplify the paperwork and delete the "assurances" required in 20 CFR part 655.203.

Six, make agricultural employer associations eligible for certification in toto for their members.

Seven, extend the period of certification under certain circumstances.

Certain aspects of the Administration's Omnibus Immigration Control Act are disturbing to NCAE. First, title I would grant amnesty to illegal aliens who entered the country prior to January 1980. Since agricultural employment is seasonal, many illegal aliens doing farm work do not stay in the United States all year and would not qualify for amnesty. Many who are and do qualify will use amnesty as the vehicle to gravitate to yearround employment in nonagricultural sectors.

Second, title II sanctions against employers of illegals will obviously increase the agricultural demand for legal workers. With a shortage of legal workers already a fact of life in agricultural areas around the country, increased demand will leave a shortfall that must be supported by a responsive H-2 safety net.

Third, NCAE fears that the pilot project for admission of up to 50,000 Mexican guest workers will not provide enough agricultural workers to fill the gap, especially true considering that once in the country the guest worker can change jobs.

Last, NCAE is concerned that the agricultural labor shortage will be further intensified in any State where the Governor chooses not to participate in the Mexican guest worker program.

Clearly, Mr. Chairman, the H-2 program must be in place to take up the slack when the numbers of available domestic guest workers are insufficient to meet the potential demand. NCAE urges the continuation and the expansion of the H-2 program, which is vital to agriculture. If enough U.S. and legal immigrant workers are available, H-2 will not be needed. However, when the H-2 program is needed its function is critical to the production of America's food and fiber.

NCAE appreciates this opportunity to testify and stands ready to answer any questions that you may wish to direct. Thank you.

Senator SIMPSON. Thank you very much, Mr. Hart.

[The prepared statement of Mr. Hart follows:]

PREPARED STATEMENT OF ASHTON W. HART

I am Ashton W. Hart, the elected President of the National Council of Agricultural Employers. I reside in New Paltz, New York, and am employed as Secretary of Valley Growers Cooperative.

The National Council of Agricultural Employers is a voluntary membership association. Its membership is comprised of individuals, companies and other organizations that employ agricultural labor, plus local, state and national associations all or some of whose members hire agricultural labor. NCAE's office is located in this city. It has members in 39 of the mainland United States.

NCAE is very concerned over certain aspects of the Administration's Omnibus Immigration Control Act (OICA) as set forth in S.1765, and their anticipated effect upon the availability of agricultural labor.

Title I of the Administration's bill, "Temporary Resident Status for Illegal Aliens," provides, in Section 101(a)(1) that temporary resident status may be accorded to any alien who entered the United States prior to January 1, 1980 and has continuously resided in the United States since that time. Agricultural employment is seasonal. Many workers come into this country from Mexico, Canada or elsewhere, for seasonal employment, then return home. No one knows how many workers illegally enter this country for agricultural employment but have not remained here continuously since January 1, 1980.

If we assume, for the sake of discussion only, that 500,000 undocumented workers are employed in agricultural labor each year and that just 10% can not meet the test of continuous residence in the United States since January 1, 1980, that would account for a loss of 50,000 workers.

It is probably safe to say that many undocumented workers, even if they could qualify for temporary resident status, will not apply if their spouses and children are not permitted entry. It is impossible to know how many would be in that category, but there may be more than imagined.

In addition, as expressed by NCAE's Executive Vice President Perry R. Ellsworth in earlier testimony, agricultural employers are fearful that many undocumented agricultural workers who qualify for amnesty and temporary resident status will leave the agricultural work force to seek jobs that provide year-'round employment, and that their doing so will produce an agricultural labor shortage.

We have considered only agriculture, but even there, it seems apparent that there is a definite possibility and a very strong probability that the agricultural labor "shortfall" will exceed the 50,000 guest workers provided for by Title VI of the Administration's bill. Adding to the concerns of agricultural employers is the fear that very few of the 50,000 Mexican guest workers will choose agricultural employment when higher-paying year-'round jobs are available to them.

There is one additional factor that must be considered. Under Title VI of the Omnibus Immigration Control Act, the State Govenors have the option of deciding whether their States will participate in the so-called Guest Worker Program.

Now, putting together all of the above factors, let us assume enactment of Title I (Temporary Resident Status for Illegal Aliens), Title II (The Unlawful Employment of Aliens Act of 1981) and Title VI (The Temporary Mexican Workers Act). NCAE believes that an undetermined number of the estimated 500,00 illegal aliens presently employed in agriculture will not qualify for temporary resident status due to lack of continuous residence. Others will return to their home country rather than seek temporary resident status. Add to that a decision by the Governor of a large agricultural state to not participate in the guest worker program, and it becomes apparent that agricultural employers in that state will find themselves facing a labor shortage that could be of major proportions.

There are those who would argue that agricultural employers faced with such a labor shortage can hire all the workers needed by paying higher wages. This argument is good in theory, but falls apart in practice because not every unemployed person is willing to engage in agricultural labor and many are unable to meet the physical demands thereof. In addition, there is a degree of specialization among agricultural workers. For example, several years ago temperatures fell below freezing in Florida. Vegetables were killed, and citrus on the trees suffered frost damage. To help alleviate the impact on farm workers out of work due to the killing of vegetables, the U.S. government set up field stations to help those workers sign up for unemployment compensation and relief to which they were entitled. At the same time, citrus growers, needing to speed up their harvest before damage occurred to their fruit, offered to hire the unemployed vegetable workers. The vegetable workers turned down the citrus harvest jobs because they considered themselves row crop workers, not tree fruit workers.

All other factors aside, there probably is a wage at which vegetable workers would harvest citrus, unemployed automobile workers would accept agricultural employment, and workers would travel from their homes in Texas to spend 30 to 60 days picking apples in upper New York state, Vermont or New Hampshire. Unfortunately, agricultural employers can not pay those higher wages and still stay in business.

Mr. George F. Sorn, Assistant General Manager of the Florida Fruit and Vegetable Association and Manager of its Labor Division, who is a witness at these hearings, can tell you about the extensive efforts made over the years to hire, train and retain U.S. citizens to cut sugar cane—and the absolute futility of those efforts. The wages offered are good. Haitian workers were earning, at piece rate, $8.00 per hour just a few weeks ago, and probably still are.

Apple harvest begins in earnest after most schools have started. Workers with children have returned home to enroll their children. NCAE has received numerous calls and letters from its members in northern states across the country expressing concern and urging retention of the H-2 program.

Now, maybe all of the fears about labor shortages are false. On the other hand, maybe they aren't. In either event, it would seem prudent to keep the H-2 program on the books and the machinery in place just in case (8 U.S.C. 1101(a)(15)(H)(ii)). The law is plain—it permits the temporary admission of an alien having a residence in a foreign country which he has no intention of abandoning, and who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country.

The granting of a non-immigrant (H-2) visa under the Immigration and Nationality Act is the sole decision of the Immigration and Naturalization Service. The INS has established as policy that before it will grant or deny such visas, it will ask the Secretary of Labor to advise it with respect to two matters: (1) Whether there are sufficient qualified U.S. workers available, and (2) Whether employment of H-2 workers will adversely affect wages and working conditions of similarly employed U.S. workers.

The admission of temporary agricultural workers under the H-2 program has occurred since 1943. During the early years the number admitted was large, but in about 1966 admissions dropped off to the point where, in 1979, only 17,569 H-2 workers were certified for admission. That figure (17,569) amounts to only 7/10% of the total US hired farm working force in the same year.

It is interesting to note that the reduction in the number of H-2 workers since 1966 has been accompanied by an increase in the number of deportable aliens apprehended in agriculture. This would seem to indicate that agricultural employers became "fed up" with the rules, regulations and requirements of the H-2 program. Incidentally, the cut-back in certifications did not result in greater employment of U.S. workers in agriculture.

The charge has been made that H-2 workers are nothing other than "indentured" workers. On May 5, 1980, in a prepared statement presented at a hearing of the Select Commission on Immigration and Refugee Policy in Albany, New York, I said:

> "To categorize H-2 workers as 'indentured' and 'docile' constantly in fear of being deported by not pleasing the 'Boss" as did David North in his October 29, 1979 comments, displays either a profound lack of knowledge of how the program operates or an unfortunate choice of words to describe ambitious workers who choose to make the most of a job opportunity. The H-2 workers have free choice to sign a work contract negotiated between their government and their U.S. employer. Their stay in the U.S. is monitored by a staff of professional Liaison Officers who represent their interests in all matters of employment. No H-2 worker is terminated or repatriated without a consultation with and the agreement of his Liaison Officer. Workers are not reluctant to be vocal about conditions of employment and to class them as 'docile' is to be unfamiliar with their character and with the system within which they work."

That statement holds true today. As further evidence that the charges are false, a paste-up of an article from the October 21, 1981 Los Angeles Times is attached to the end of this statement.

The Select Commission on Immigration and Refugee Policy recommended the removal of "disincentives" to the employment of H-2 workers. It recommended that employers be required to pay FICA and unemployment insurance for H-2 workers. NCAE takes grave exception to the concept, advanced by certain witnesses, that H-2 workers are "cheap labor." There are no cost incentives to employing H-2 workers. This fact has been documented many times over, and NCAE will be happy to provide the statistics again if this Subcommittee so desires. The imposition of FICA and unemployment compensation taxes on the earnings of H-2 workers is wrong in principle. Not a single H-2 worker is or will be eligible to receive either unemployment or Social Security benefits. To require an employer who can not find enough U.S. workers to fill his needs, to pay FICA and FUTA taxes on top of the increased cost of employing H-2 workers lacks equity and imposes an unnecessary and excessive burden.

NCAE urges continuation of the H-2 program, not as a primary source of agricultural labor, but as a fall-back source of labor, as intended by law. No agricultural employer can employ H-2 workers until certified by the Secretary of Labor. The Secretary of Labor must assure the Immigration and Naturalization Service that qualified U.S. workers are not available. Employers must comply with Department of Labor regulations which impose numerous and strigent requirements.

The simplest, easiest and least expensive way to obtain agricultural labor is to work outside the H-2 program. There are situations however, which force employers into the program.

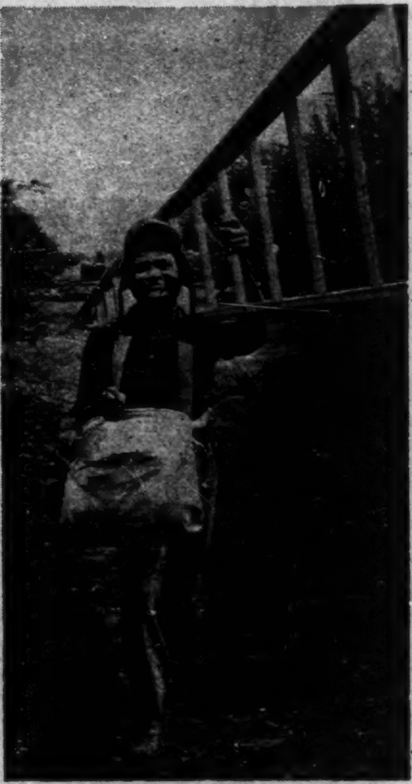
NCAE urges the continuation of the H-2 program because of the massive uncertainties surrounding the Omnibus Immigration Control Act. If future events come to pass as NCAE sees them, the H-2 program will be the only alternative to failure for growers who will be unable to get workers any other way. If NCAE is in error and there are enough U.S. and legal immigrant workers to meet the demand, so be it. The H-2 program will not have to be used.

The Select Commission's report recommended streamlining the H-2 application process. Last September NCAE prepared a list of recommended H-2 program changes. That list is attached to this statement.

NCAE appreciates the opportunity to make known to this subcommittee its views regarding the H-2 program, and stands ready to furnish any requested additional information.

Los Angeles Times

4 Part I-A / Wednesday, October 21, 1981



Associated Press

Walter Walker, one of 450 Jamaicans picking apples in Maine, lugs a ladder through an orchard.

Jamaicans in Maine

Stint Profitable—for Boss, Workers

By STEVEN MORRISON, *Associated Press*

AUBURN, Me.—The business is apples and the aim is money, but in the 10 years Jamaicans have picked apples for Eugene and Lois Wallingford, the profits have extended beyond the ledger.

In addition to dedicated work and easygoing friendliness, the Jamaicans have brought the Wallingfords a new understanding of a culture foreign to Maine.

Walter Walker first came to the Wallingford's 115-acre orchard atop picturesque Perkins Ridge in 1971. For six weeks each fall, the 45-year-old Jamaican does what few Americans want to do.

He's in the orchard by 8 a.m., climbing up and down a 22-foot ladder, lugging 30 pounds of apples in a tin-and-canvas bag against his chest, in temperatures of 40 degrees cooler than it ever gets in St. Elisabeth, Jamaica.

U.S. Pay Much Higher Than Jamaica's

But that's OK with Walker and the other Jamaicans, because they earn more here in a week, $175, than they do working at home for a month.

And it's fine for the Wallingfords, because a Jamaican will pick up to eight times as many apples as the occasional American who gives it a serious shot.

For the past 10 years, Maine's 24 largest apple producers have hired about 450 Jamaicans for each fall's apple harvest. More than 6,000 work throughout the Northeast apple region, picking for the basic wage of $3.44 an hour but working fast enough to earn up to $50 a day on the additional piecework pay

The New England Apple Council arranges work for the Jamaicans through a Kingston-based organization called the British West Indies Central Labor Group

Americans Lazy Now, Farmer Says

Americans and Canadians used to do the job, but Americans got lazy and Canadians have turned to more profitable industrial jobs, said Eugene Wallingford, a slight, 50-year-old farmer who grows apples where his father grew them beginning in the 1920s.

"The Jamaican is the best picker I've ever seen," Wallingford said. "They're like American labor was in the '30s and '40s. They've never seen welfare. They like to work. There's pride in what they do."

Wallingford said he was the second grower in Maine to employ Jamaicans. Two men from the 1971 crew come back year after year because of the bond they have with the Wallingfords.

Lois Wallingford is a robust, 47-year-old woman whom the Jamacians call "Mum." While her husband talks about the Jamaicans' value as workers, she speaks of the cultural impact they have made on her family and community

Accents a Problem

The Wallingfords said their first problem was understanding the West Indian accents and idioms. The workers helped by speaking more slowly and using more of the king's English instead of their patois.

The Jamaicans live in a camp about 12 miles from the Wallingford farm and are bused to work each day.

"They'll come into work in the morning so cheerful that they just cheer me right up," Mrs. Wallingford said. "It's been great for our kids, more than anyone else. The Jamaicans saw the kids playing kickball one time and showed them soccer. It's given the kids the opportunity to learn about another culture."

The people in the Auburn area have learned, too, with some mixed reactions, she added. She recalled the first Sunday she took the Jamaican workers to church and they brought along beer, a West Indian custom. No one in the congregation seemed to mind, she said.

Some Uneasiness

But the mere presence of the Jamaican apple pickers has created some uneasiness, she admitted. "I'll be walking thorugh a store with the Jamaicans and I'll see someone I know who'll pretend she doesn't know me," she said. "I haven't lost any friends, but some aren't as close as they used to be."

She said the problem is not racial prejudice, but the idea that foreigners are taking jobs away from Maine residents, she said.

Government regulations require growers to advertise their apple-picking jobs and hire anyone who wants to work. But the Wallingfords say they can't hang on to American workers.

"We had 75 Americans here for our early season and only one has come back," Mrs. Wallingford said.

The Jamaicans fly to Miami in September and ride a bus to Maine, with their travel expenses of about $400 each paid by the Wallingfords.

After they finish picking apples, most of the Jamaicans head south to cut sugar cane in Florida until the spring, when they finally head home to Jamaica for several months with their families before returning to Maine to start the cycle again.

RECOMMENDED H-2 PROGRAM CHANGES

Change in the Immigration and Nationality Act

Section 101(a)(15)(H)(ii) should be amended to read as follows:

> "(ii) who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found ~~in this country~~ at the time and place of need."

Comment: Under the Act and regulations written by the U. S. Department of Labor both the Department's Employment Service and agricultural employers have, year after year, engaged in recruiting exercises nearly all of which have failed to produce needed workers. The farther away in both time and distance workers are sought the less likely the recruiter is to have success. The suggested change would not prohibit the Employment Service from searching for workers anywhere in the country, but it would make the H-2 program more responsive at the time of need and will eliminate many "exercises in futility" which occur yearly. Under non-agricultural regulations "time and place" is defined to mean the Standard Metropolitan Statistical Area (SMSA). For agriculture, it could be defined as being a radius, in miles, from the precise job site.

Changes in Present Regulations (20 CFR Part 655, Subpart C)

1. Extend the period of certification under certain circumstances.

   An employer who has repeatedly demonstrated a need for H-2 workers for a specific crop and has been repeatedly certified therefor for three years or more should be certified for a period of 3 or 5 years (to a date certain) and not have to go through an annual "exercise" to demonstrate need. At the end of such period the full certification procedure may be required to justify another "term certification" of 3 to 5 years.

   If an employer, "term certified" for one crop (apple pickers for instance) needs H-2 workers for peach harvest, that grower would have to seek certification for H-2 peach pickers on a yearly basis for three years, then would, assuming demonstrated need for each of the three years, be "term certified" for a period of 3 to 5 years for peach pickers, too.

   An employer who seeks certification for H-2 workers for the first time would be processed on a yearly basis for three years before being eligible for "term certification."

   Such a change in the program would save the Department of Labor and State and local employment services offices much time and paper work. Employers who were "term certified" would still be required to abide by all other requirements of the H-2 program regulations.

   "Term certified" employers would pay travel at the end of the contract period into which workers have entered.

2. Make agricultural employer associations eligible for certification for H-2 workers en toto for their members.

   Making agricultural employer associations eligible for certification en toto for their members would then make it possible to move such workers from employer to employer as needed. This would provide more steady employment for workers and would probably result in a need for fewer total H-2 workers. The question of whether the association or farmer members of the association are the employer would have to be resolved and made a matter of law.

   Such a provision would be self-policing because the association would keep its members in line for the general good and to maintain "term certification" for all members.

3. Reduce the number of days during which a job order must be in the Federal-State employment system to thirty (30).

The present H-2 regulations (20 CFR Part 655, Subpart C) require that an employer seeking certification for H-2 workers must file a job order with the Employment Service early enough that it is in the USES's Interstate Clearance System for at least 60 calendar days prior to a date 20 days prior to date of need. The interval should be reduced to 30 days. The USES would still be required to make a certification decision at least 20 days prior to date of need for H-2 workers.

The USDL's computer job bank and the change to "at the time and place of need" in the Immigration and Nationality Act should enable the Department to conduct a meaningful search within 30 days.

4. The Adverse effect wage rate should be abolished.

   There is no such requirement for non-agricultural employers of H-2 workers. Payment to H-2 workers of the Federal minimum wage (now $3.35 per hour) or the prevailing wage rate in the area of employment at the time of employment, whichever is higher, will assure no adverse effect on the wages of U. S. workers similarly employed.

5. The requirement for free housing and a ceiling on board charges should be abolished.

   Employers should be able to provide housing at no charge or "at cost." Employers should be able to provide meals "at cost." The language of the Fair Labor Standards Act and appropriate FLSA regulations should govern.

   If housing is not available, an employer should be allowed, during an interim period while housing is being constructed, to provide a housing allowance to workers. No employer should be required to provide housing for workers able to commute between home and job on a daily basis.

   The cost of constructing housing for single H-2 workers and U. S. workers hired by an employer of H-2 workers is part of the price for receiving H-2 worker certification, but it should not be used as a deterrent or penalty.

6. Delete the "assurances" requirement in (20 CFR Part 655.203).

   The requirements covered therein are already in law or regulations. No non-agricultural employer is required to execute such a document. It is a monstrous paper work creator.

7. Simplify paper work.

   In 1977 three pages were required to file a request for certification and a job order. In 1980 the number had risen to 22. As a prime example of paper work proliferation, Maryland peach growers had [illegible] file 48 pages to obtain Jamaican cooks to cook for their Jamaican H-2 workers. At growers' insistence the number for 1981 was cut back to 3, but there is no assurance it will stay there.

8. Employers should not be required to pay Workers Compensation and Social Security taxes on the earnings of H-2 workers.

   The proposed requirement that employers pay unemployment compensation and Social Security taxes on the wages of guest workers and H-2 workers is inequitable. First, those workers cannot receive the benefits of either program. Second, some employers are contributing a percentage of wages earned by H-2 workers to be paid into the British West Indies governments that have a form of social security established for their citizens.

   Contrary to allegations, exemption from paying such taxes to the Federal government is not an inducement for U. S. agricultural employers to seek H-2 workers.

NCAE
9/8/81

Senator SIMPSON. Mr. Sorn, please.

STATEMENT OF GEORGE F. SORN, ASSISTANT GENERAL MANAGER, FLORIDA FRUIT & VEGETABLE ASSOCIATION

Mr. SORN. Thank you, Mr. Chairman. I appreciate the opportunity to be here.

The organization I work with, the FFVA, is a growers organization with substantial membership in citrus, vegetable, sugar cane, and tropical fruit in Florida. We have been involved with the H-2 program in Florida since 1947. This program in the past included workers in vegetables and in citrus, but since 1971 only includes H-2 workers who cut sugar cane.

Although it is preferable for employers to utilize a work force of legal U.S residents, it will continue to be necessary and in the national interest to import temporary seasonal workers in critical labor intensive tasks in industries for which the only option would be to limit production and thereby reduce the employment opportunities for legal U.S. residents.

Admission of supplementary alien labor for these tasks in order to facilitate higher levels of production and domestic employment in other phases of production, processing, and distribution may be desirable under circumstances that protect U.S. workers similarly employed. This is particularly important in agriculture, where availability of labor for a critical high labor task in the production of a commodity in which labor demand is otherwise much lower may effectively limit the volume of production that can be economically undertaken.

We feel the continuation of an H-2 program with reasonable regulations, aimed at protecting U.S. workers similarly employed, is imperative and the ability of U.S. employers to avail themselves of this means of obtaining supplemental workers should be preserved over and above any transitional period measures and solutions that this Congress may consider on the illegal alien and refugee question.

The experience in Florida with H-2 workers for almost four decades demonstrates how the H-2 program has been successfully used to fill a severe seasonal shortage of American workers by providing legal H-2 workers to perform a particular function and thereby eliminating the necessity of considering the use of illegal aliens.

The use of H-2 workers in cutting sugar cane has also assured continued employment for 7,000 American workers in all other jobs, including many year-round jobs, directly connected with the Florida sugar cane industry, and for many more workers indirectly connected with the industry.

We feel strongly that the Department of Labor's position since the early sixties has been to eliminate the use of H-2 workers. The criteria regulations promulgated in the early sixties and since amended were developed to this end and not to certify to genuine labor shortages.

We do submit for your consideration that one of the ways to inhibit the employment of undocumented aliens in the United States would be for Congress and the executive branch to direct that the use of legal temporary workers under the H-2 program is preferred to the continued use of illegal aliens and that all administrative policies should be directed toward this end.

We realize there are detractors to the use of the current H-2 program as an "escape valve" where there is a genuine labor shortage. However, there have also been many distinguished individuals and groups who have backed the use of H-2 workers as an "escape valve" and in particular the H-2 program as administered by the British West Indies Central Labour Organisation.

From time to time, detractors of the H-2 program raise issues regarding the use of H-2 workers. I will briefly discuss three.

One of the issues of current concern to H-2 employers in Florida is the attempt to force H-2 employers to give job preference to workers who are coming into the United States illegally over those who have come in legally and have come in legally for decades. Since the worker groups who have raised the issue have taken it to Federal court, it would be inappropriate for me here to elaborate greatly on the issue, except to express the opinion that the job of controlling illegal immigration by this administration and this Congress will be much more difficult should for some reason the court determine that workers who have entered the United States illegally have job preference over workers who are in the United States legally.

Another issue regards the effect of H-2 workers on the wages of U.S. workers. Experience with the H-2 program in Florida shows that it has not had a detrimental effect on the wages of U.S. farmworkers in Florida.

An analysis of the U.S. Department of Agriculture statistics shows that Florida, with the highest number of H-2 agricultural workers of any State in the Nation, had the highest percentage increase in average hourly farm wage rates between 1969 and 1977 of any State in the Nation. The Florida increase was 127 percent, 63 percent above the 68 percent overall average increase for all States for the same period.

The same analysis also indicates that for four of the H-2 user States on the eastern seaboard for which specific State data was available, both in 1969 and 1977 three had an average increase during that period above the national average, percentage increase.

Another claim is that H-2 workers are so-called cheap labor. We agree with the principle that H-2 workers should not be cheaper to use than U.S. workers. However, because of the regulations imposed on potential farm employers of H-2 workers, the cost per H-2 worker is already much greater than the cost per U.S. worker to a farm employer who is fortunate enough to be able to utilize all U.S. workers.

In Florida, it costs an H-2 employer $622 to use an H-2 worker over a 20-week season in sugar cane. An employer who does not have to comply with the H-2 regulations and can find enough American workers would only have the cost of providing unemployment insurance and social security at $474 per worker for a 20-week season.

These costs do not include additional costs attributed to the adverse effect wage rate, which in Florida for this season was $4.69

an hour, 40 percent higher than the Fair Labor Standards Act's minimum of $3.35 per hour.

Our written testimony, Mr. Chairman, also goes into other issues.

One of the questions I understand you wanted to be answered was what can be done to improve the H-2 program and still protect U.S. workers. No. 1, the farm labor placement system of the Department of Labor Employment Services must be strengthened; 20 years ago, farm employers had confidence in the ability of the Department of Labor's farm placement system to do all possible to find qualified farm workers. The farm workers had confidence they could find available jobs through this same system. That confidence is not evident today for various reasons, and the U.S. Department of Labor needs to strengthen the services they perform so they are acceptable to both workers and employers.

The second necessity——

Senator SIMPSON. Could you please summarize?

Mr. SORN. The other major area that I think has been a boon to the H-2 program is that the H-2 worker, particularly where there are large numbers of H-2 workers in one area, must be represented by individuals from the originating country, similar to what we call the liaison officers in the existing BWI H-2 program, to insure compliance to U.S. regulations and any negotiated wages or working conditions. This would also insure that employers are complying to all regulations on legal H-2 workers and thereby not undermining conditions for U.S. workers similarly employed.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, Mr. Sorn.

[The prepared statement of Mr. Sorn follows:]

PREPARED STATEMENT OF GEORGE F. SORN

My name is GEORGE F. SORN, Assistant General Manager and Manager of the Labor Division of FLORIDA FRUIT & VEGETABLE ASSOCIATION (FFVA), 4401 E. Colonial Drive, (P. O. Box 20155), Orlando, Florida 32814, an organization with substantial membership who grow citrus, vegetables, sugar cane and tropical fruit in Florida.

FFVA has a longstanding interest in and a program for the legal importation of supplementary temporary non-immigrant alien workers for Florida Agriculture. Some sugar cane employers in Florida have utilized H-2 workers since their importation during the early years of the second World War. This H-2 Program also included workers in vegetables through 1965 and in citrus through 1971.

We realize the testimony this morning is directed at the H-2 sections of the Administration's published Policy on Immigration & Refugees. However, before addressing those particular issues, we would stress that FFVA's position is one involving several of the elements of the published policy and our position on any one of the elements could be different if that is the only element that will eventually be considered by the Congress.

For instance, FFVA Policy dictates that we are for the sanctions against employers BUT ONLY if there is an effective but simple means for workers to demonstrate their eligibility to work and there is a reasonable "safety valve" program for use of legal "guest workers" and H-2 workers, which is in place and can be used if employers cannot under reasonable conditions obtain workers who can legally work in the United States.

THE H-2 PROGRAM IN FLORIDA

Background and Perspective:

We are aware of many of the reports, papers and studies which have been directed at various aspects of the H-2 Program during the last few years, including those presented to the National Commission for Manpower Policy in 1979, the National Council on Employment Policy in 1976, several Senate and House Committees and Subcommittees, the 1977 U. S. Department of Labor hearings on changes in "Criteria" regulations and the Select Commission on Immigration and Refugee Policy. Needless to say, we do not agree with some of the statements, opinions and conclusions presented in the various material.

We have not attempted to present a complete historical review of the use of temporary non-immigrant aliens in Agriculture in Florida or the United States. We are aware of several studies, which do trace the history of the H-2 Program, including:

1. The Administrative presentations by the Department of Labor and the Department of Justice (Immigration & Naturalization Service) on the ADMISSION OF ALIENS INTO THE U.S. FOR TEMPORARY EMPLOYMENT and COMMUTER WORKERS to the Committee on the Judiciary Subcommittee No. 1, House of Representatives for its Study of Population & Immigration Problems on June 24, 1963, and,

2. A study prepared for the Subcommittee on Immigration of the Committee on the Judiciary U. S. Senate on THE WEST INDIES (BWI) TEMPORARY ALIEN LABOR PROGRAM 1943-1977 as printed in 1978 by Joyce C. Vialet.

Based on our Florida H-2 experience, which spans three and one-half decades and includes activities in citrus, sugar cane, vegetables and tropical fruit, we feel strongly that a properly administered H-2 Program is essential to finding a solution to both short term labor shortages and at least a reduction and possibly an elimination of the use of illegal aliens in the United States. The H-2 Program must remain as a viable means of supplying labor for a genuine labor shortage, regardless of the final deliberations of this Congress on the "Guest Worker" Program or the other solutions included in the final Immigration and Refugee package.

The Administration and this Congress are to be commended for considering ways to drastically reduce and, if at all possible, eliminate the critical presence of millions of illegal aliens and refugees in the United States.

As a goal, we believe U. S. Employers should strive to employ a legal work force. The presence of vast numbers of illegal workers can only be detrimental to many American citizens and to other workers who are legally able to work.

Although it is preferable for employers to utilize a work force of legal U. S. residents, it will continue to be necessary and in the national interest to import temporary seasonal workers in critical labor intensive tasks in industries for which the only option would be to limit production and thereby reduce employment opportunities for legal U. S. residents. Admission of supplementary alien labor for these tasks in order to facilitate higher levels of production and domestic employment in other phases of production, processing and distribution may be desirable under circumstances that protect domestic workers similarly employed. This is particularly important in Agriculture where availability of labor for a critical high labor task in the production of a commodity in which labor demand is otherwise much lower, may effectively limit the volume of production that can be economically undertaken.

We feel the continuation of an H-2 Program with reasonable regulations, aimed at protecting U. S. workers similarly employed, is imperative and the ability of U. S. employers to avail themselves of this means of obtaining supplemental workers should be preserved over and above any transitional period measures and solutions that the Congress may consider on the illegal alien and refugee question.

There is no doubt in our minds that some sort of program to allow foreign workers to legally immigrate to the

U. S. to perform temporary jobs as non-immigrant aliens is an essential part of any solution to the illegal alien problem. Immigration statistics reflect that the curtailment of the Bracero Program and the restrictive regulations imposed on the H-2 employers in the early and mid-1960's was a major catalyst in the tremendous increase in the illegal alien problem since that time.

The following statistics taken from various issues of the Annual Reports of the Immigration & Naturalization Service pertain:

Table 1

Foreign Workers Admitted for Temporary Employment in U. S. Agriculture by Year - 1958 - 1976 - Versus Deportable Aliens Apprehended in Agriculture in U. S.

Year	Temporary Workers Admitted for Agricultural Employment	Deportable Aliens Apprehended in Agriculture
1958	433,704	6,310
1959	464,128	4,935
1960	447,207	4,402
1961	312,991	5,162
1962	303,638	5,574
1963	243,120	9,143
1964	237,700	10,689
1965	155,671	14,248
1966	64,881	24,385
1967	57,720	27,830
1968	50,782	39,301
1969	43,527	50,881
1970	47,483	53,674
1971	42,142	74,423
1972	38,752	84,084
1973	37,294	101,220
1974	33,908	111,289
1975	25,434	116,250
1976	22,124	116,197

Source: Various issues of the Annual Report of the Immigration & Naturalization Service

The preceding table only indicates the number of illegal aliens apprehended in U. S. Agriculture and not the total number used by U. S. Agriculture. It is safe to assume, therefore, that most of the H-2 and Public Law 78 temporary farm workers of the 50's and 60's have of necessity been replaced by illegal aliens and not by American workers.

The transition from situations wherein illegal aliens are utilized on an unregulated basis to a domestic work force supplemented, where necessary, by limited numbers of temporary legal alien workers admitted and employed under regulated conditions and labor standards will require substantial adjustments for many employers. This will be particularly true in certain regions and commodities which are thought to be heavily dependent on illegal workers for high labor-using seasonal tasks. While it is necessary to quickly implement stricter Border control and prohibitions against alien employment, it will be difficult for some employers to rapidly adjust their hiring and labor utilization practices without traumatic economic and human consequences. Neither a small-scale guest worker program nor amnesty for permanent resident illegal aliens is likely to meet the need created by the reduction in illegal alien workers.

The experience in Florida with H-2 workers for almost four decades demonstrates how the H-2 Program has been successfully used to fill a severe seasonal shortage of American workers by providing legal H-2 workers to perform a particular function and thereby eliminating the necessity of considering the use of illegal aliens. The use of H-2 workers in cutting sugar cane has also assured continued employment for 7,000 American workers in all other jobs (including many year-round jobs) directly connected with the Florida sugar cane industry, and for many more workers indirectly connected with the sugar industry.

The Florida sugar industry harvested 10.6 million gross tons of cane from 320,700 acres in the 1980-81 season. The harvest season usually starts about November 1 and ends about April 1. The cane is all located in the Glades area of Florida within a 30-mile radius of South Bay.
The estimated value of the crop was $600 million dollars. In excess of $150 million of this amount is earned by sugar industry employees in wages and benefits. This contribution to the economy of Florida and the nation would not have been possible without the contribution made by H-2 workers during each of the last 37 years.

A brief review of the history of the use of H-2 workers in VEGETABLES, CITRUS AND TROPICAL FRUIT in Florida reveals that H-2 workers were used in these crops from the mid-40's and until 1965 in vegetables and tropical fruit and until 1971 in citrus. Since 1971, certification for use of H-2 workers in Florida has been restricted by the U. S. Department of Labor to sugar cane cutting (Occupational Title & Code: Harvest Worker, Field Crop (Agric.) 404.687.014) and the "supporting" occupations of Cooks (Cooks, Agric. 315.361.010), Camp Managers (Manager, Agric. Labor Camp 187.167.050) and Group Leaders (Group Leader (Agric.), Crew Boss or Row Boss 180.167.022). Relatively few workers are certified in the "supporting" occupations. All other work in the growing, harvesting and processing of sugar cane is performed by American workers.

Under pressures from the U. S. Department of Labor throughout the 1960's, Florida Agriculture conducted massive recruitment efforts direct and through the Employment Services System. The industry did find thousands of farm workers displaced by mechanical cotton harvesters in the late 1950's and early 1960's in the southeastern United States. The imposition of the minimum wage on Agriculture in 1967 resulted in many more farm workers in the southeastern United States being displaced, particularly when cotton growers found it cheaper to use herbicides instead of human cotton choppers.

Some of the workers recruited for Florida during this period (13,000 per year at peak) are still working in Florida Agriculture. Most have gone on to other employment and were gradually replaced by Spanish-speaking workers of Mexican descent. In the early 1960's, less than 5% of the farm workers found in Florida were Spanish-speaking. They now approach 35%. Fortunately, or unfortunately, depending on how you look at it, recruitment efforts by Florida growers during the 1960's and 1970's not only found some American workers but also found illegal Mexican workers. During the period of low unemployment in the United States in the late 1960's and early 1970's and with the realiza- that U. S. Department of Labor policies were directed toward eliminating the use of H-2 workers and not at certifying to genuine labor shortages, farm employers looked to the workers of Mexican descent, including the illegals, as the answer to their labor problems. In the 1970's, the use of illegal aliens increased as more and more welfare, food stamp and educational programs were directed at the farm labor force and growers found themselves increasingly in competion with these programs and non-farm employers for the same labor force.

We continue to feel strongly that the U. S. Department of Labor's position since the early 1960's has been to eliminate the use of H-2 workers. The "Criteria" regulations promulgated in the early 60's and since amended were developed to this end and not to certify to genuine labor shortages.

The labor utilization experience of the Florida sugar cane industry with its ability to obtain legal H-2 workers and with no illegal aliens being used - versus the experience in Florida's vegetable, citrus and tropical fruit industries (wherein the forced curtailment of the use of H-2 workers led to the use of illegal aliens) - dramatically illustrates to us the effect Congressional and Executive Directives (to the U. S. Department of Labor in the 1960's to eliminate the H-2 Program) had on the increased use of illegal aliens in Florida Agriculture in the last 15 years. The formulators of the U.S. Department of Labor policy in the 60's must take at least part of the blame for contributing to the massive illegal alien problem now being exeprienced in the United States.

We do sumbit for your consideration that one of the ways to inhibit the employment of undocumented aliens in the United States would be for Congress and the Executive Branch to direct that the use of legal temporary workers under Public Law 414, Title I, Section 101 15 H (ii) is preferred to the continued use of illegal aliens and that all administrative policies should be directed toward this end. This directive would not need a change in the law. It would take some changes in the U. S. Department of Labor and possibly the Immigration & Naturalization Service regulations.

At this point in time, we are not prepared to say that the H-2 Program alone should be the only legal "escape valve" should an employer experience a genuine labor shortage. It is possible a "guest worker" program would also be needed if the "amnesty" provision of the final overall Immigration & Refugee package creates massive labor shortages.

COMMENTS ON VARIOUS ISSUES REGARDING THE USE OF H-2 WORKERS

We realize there are and have been detractors to the use of the current H-2 Program as an "escape valve" for a genuine labor shortage. However, there have also been through the years many distinguished individuals and groups who have backed the use of H-2 workers as an "escape valve" and in particular, the H-2 Program, as administered by the British West Indies Central Labour Organisation.

For example:

1. In 1957, Subcommittee No. 1 of the House Judiciary Committee stated in its report that the BWI Program in the United States "...does not affect adversely similar categories of domestic workers." They further stated "The British West Indies Program has been found to operate satisfactorily in all other respects and has the additional merit of being beneficial to the economy of the British West Indies, a neighbor of the United States."

2. In the 1961 Senate Committee on Agriculture & Forestry hearings concerned with the extension of the Mexican Farm Labor Program, Secretary of Labor Goldberg stated "...I must say that the Jamaican Government which does supervise the program from their end has seen to it that the standards are much in excess of what the Mexican labor standards are."

3. In 1962, AFL-CIO President George Meany wrote to the Secretary of Labor strongly urging on behalf of the AFL-CIO that BWI workers be allowed to remain on a year-round basis. He also took the opportunity to praise the BWI Program, noting for instance that "It is well known that the standards of the BWI Program improve the lot of domestic workers in regard

to housing, workers' compensation and racial matters." He expressed the opinion that, through the program, "The United States is making a substantial aid contribution to the West Indies at no cost to the American taxpayer, at no loss of self-respect to the West Indians, but merely as fair return for a fair day's work on the part of law-abiding and ambitious West Indian workers."

4. On December 2, 1964, at a U. S. Department of Labor hearing at Bay Front Auditorium in Miami, Mr. W. J. Usury, at the time the business agent of the International Association of Machinists (and subsequently U. S. Secretary of Labor), told U. S. Department of Labor officials if the importation of foreign workers should be stopped, many domestic employees would be out of a job, including several hundred employees of sugar mills in Belle Glade and Clewiston, whom he represented.

5. In an opinion in the fall of 1972 in the U. S. Court, Southern District of Florida, in the case of the UNITED FARM WORKERS' UNION, AFL-CIO, et al, vs RICHARD G. KLEINDIENST, et al, the court stated it found the evidence to be overwhelming that the defendants were not failing to provide employment for any qualified worker. Quite the contrary, the court added, the (recruitment result) figures are shocking and the court can only draw one of two conclusions: One, there either is not this great mass of farm workers available for employment, or, secondly, that they do not want to cut cane. In its decision, the Court further stated "I am very favorably impressed with the efforts that have been made by all involved here. I think the advertising campaign and the other efforts that have been made are way above any minimum standards that the Secretary of Labor or anyone else could hope for."

From time to time, detractors of the H-2 Program raise issues regarding the use of H-2 workers. The following explores some of these issues from the standpoint of Florida's farm employers.

The Effect of the Presence of H-2 Workers on Wages of American Farm Workers

Experience with the H-2 Program in Florida shows that it has not had a detrimental effect on the wages of American farm workers in Florida.

The following Table compares the all hired farm worker average wage rate per year for the 1974-1980 period with the national average.

Table 2

All Hired Farm Worker Average Earnings Per Hour

Year	National Average	Florida Average	Ranking in Nation
1974	$2.25	$2.63	2nd
1975	$2.43	$2.82	3rd
1976	$2.66	$3.05	3rd
1977	$2.87	$3.23	3rd
1978	$3.09	$3.52	3rd
1979	$3.39	$3.80	3rd
1980	$3.66	$4.19	3rd

Source: Various issues of the U. S. Department of Agriculture Publications "FARM LABOR"

Florida with the highest number of H-2 workers of any state in the nation has for the past seven years been one of the top three states in the nation based on the average wage rate paid per hour for all hired farm workers. It is hard to see how the presence of H-2 workers in Florida has had a detrimental effect on the wages of American farm workers when we are always ABOVE the national average and one of the three top states in the nation.

The National Association of Farm Worker Organizations (NAFO) has presented several papers, which are critical of the use of H-2 workers in the United States. In one of their recent papers, Assistant Professor James L. Medoff and Katherine G. Abraham of Harvard University and the National Bureau of Economic Research performed an analysis of the level of growth of the average hourly earnings of hired farm workers in the 48 continental United States, using various issues of the U. S.Department of Agriculture's publication "FARM LABOR."

Contrary to the conclusions by NAFO, the analysis shows that Florida, with the highest number of H-2 workers of any state in the nation, had the highest percentage increase in average hourly farm wage rate between 1969 - 1977 of any state in the nation. The Florida increase was 127% -- 63% above the 78% overall average increase for all states for the same period. The analysis also indicates that for the remaining four H-2 user states for which specific state data was available both in 1969 and in 1977, three had an average increase between 1969 - 1977, which was above the national average percentage increase. It is difficult for us to conclude from this analysis (as NAFO apparently has) that the presence of H-2 workers has had a depressing effect on the wages of American farm workers.

The experience of our vegetable growers in the Glades area of Florida indicates the presence of H-2 workers has been the major factor in annual demands by vegetable and other workers for growers to increase their piece or hourly rate in proportion to the increase in the annually revised adverse effect rate applicable to H-2 workers.

The Glades area of Florida is one of the largest farming areas in Florida. In addition to the 320,700 acres of sugar cane within 30 miles of South Bay, the same area produces some 20,000 to 30,000 acres of celery, corn, radishes, lettuce, potatoes, cabbage and other leaf crops. On the periphery of the 30 miles and also drawing from the same labor market area at times are extensive citrus, watermelon and other vegetable producing areas.

The harvesting season for sugar coincides with the harvesting season of most of the other crops and competition for labor is always intense.

The statistics we have seen and our growers' actual experience in the Glades area prove to us that H-2 workers do not have a depressing effect on wages of American farm workers in Florida. On the contrary, their presence exerts pressure on employers to raise wages and benefits to meet the U. S. Department of Labor's adverse effect minimum and the guarantees contained in the "Criteria" regulations and the West Indies worker's contract.

The Cost of Using H-2 Workers

We agree with the principle that H-2 workers should not be "cheaper" to use than U. S. workers. However, because of the regulations imposed on potential farm employers of H-2 workers, the cost per H-2 worker is already much greater than the cost per U. S. worker to a farm employer who is fortunate enough to be able to utilize all U. S. workers.

The following COSTS per H-2 worker are calculated only for Florida and are based on the 1980-81 sugar cane season of 140 days (20 weeks) with workers averaging $200 per week ($4,000 for the season):

Round trip transportation (plane and bus)	$207.00
Free rent @ minimum of $1 per day	$140.00
Loss on Board (meals) (Average of 50¢ per day)	$ 70.00
Transportation to field @ $1.00 per day	$140.00
Immigration & Naturalization Service's Bond Costs per worker	$ 20.00
Contribution to Social Security Scheme in Worker's Home Island	$ 40.00
Losses on Domestic Worker's Transportation - Cost of advertising, recruitment, etc.	$ 5.00
TOTAL COST for EACH H-2 Worker	$622.00

Sugar employers also guaranteed the "adverse effect" wage rate minimum of $4.09 per hour, (74¢ over the current $3.35 per hour Fair Labor Standards Act's minimum wage). In the 1981-82 season, this "adverse effect" wage rate is $4.69 per hour, or 40% higher than the Fair Labor Standards Act minimum wage for all other employees in the U. S. We have NOT used the difference between the "adverse effect" wage rate and the Fair Labor Standards Act's minimums as an added cost.

Farm employers, who are able to obtain enough labor without the necessity of resorting to the use of H-2 workers, need not comply with the "Criteria" regulations. It is not the prevailing practice in Florida Agriculture to provide advance or return transportation, free rent, meals or transportation to the field to farm workers.

However, the employer who can obtain a sufficient supply of workers in the U. S., would have to provide Unemployment Compensation and Social Security insurance.

Unemployment Compensation (4.5% State + .7% Federal on $4,000)	$208.00
Social Security (6.65% of $4,000)	$266.00
TOTAL COST for Non-Criteria American	$474.00

The ADDITIONAL COST to use H-2 workers is $148 per worker in Florida. (1)

Workers' compensation costs would be the same for both H-2 and American workers.

Contrary to allegations, exemption from paying Unemployment Insurance and Social Security taxes on the wages of H-2 workers does not make H-2 workers cheaper to use and is not an inducement for U. S. agricultural employers to seek H-2 workers.

Use of General Unemployment Figures as an Indication that Workers are Available for Agriculture

From time to time, statements are made that H-2 certification is not needed because there are unemployed people in the U. S. who could do the work. Although this sounds good "in theory" it does not provide a supply of farm workers "in practice." In Florida, 70% of the hired farm jobs are seasonal jobs. The seasonality of the job deterrs many unemployed people from working in Agriculture even on a temporary basis.

Unemployed workers are not necessarily unemployed agricultural workers. Unemployed agricultural workers in one part of the country are not necessarily available for employment in another area of the country. Even unemployed agricultural workers in a given area are not necessarily available for other agricultural work in the same area. Unemployed citrus pickers, for instance, will not necessarily pick strawberries and vice versa. Unemployed lettuce cutters will not pull corn or cut cane. The workers themselves will not accept jobs even though unemployed. The easy access to Food Stamp, unemployment compensation and "upgrading" programs also tend to induce workers not to seek farm employment. Many migratory workers will not travel even at no cost to work four or six weeks in a distant state, particularly when there is no hope of intermediate or prolonged employment. The time of the year also influences willingness to travel. Parents of school age children, particularly in the South, are not inclined to go North with or without their families and particularly not for short term employment after school starts in the fall.

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(1) In northern states, where period of employment is shorter, and transportation costs high, the difference is even greater.

The U. S. Department of Labor "Adverse Effect" Wage Rate and Piece Rate Incentive System

Under certification for use of H-2 workers, employers must guarantee an "adverse effect" minimum wage determined by the U. S. Department of Labor each year.

The current "adverse effect" rate methodology has come under much criticism from both worker and employer groups. It is outdated and should be revised. Our recommendations on changes in adverse effect methodology will continue to be presented to the U. S. Department of Labor.

The H-2 workers brought in to cut cane are paid on a piece rate incentive system. The piece rate must be and is increased from year to year so that the incentive for the individual worker to earn more than the adverse effect wage continues as a part of the piece rate system. Claims have been made that the piece rate is not increased and that employers force workers to increase productivity instead. This claim is not true. For example, Table 3 illustrates that over the past seventeen years, sugar cane cutter productivity per hour has not increased appreciably. Rather, the productivity per hour varies from year to year depending on the many factors involved in the growing and cutting of cane and there is no trend toward either higher or lower productivity.

On the other hand, the average earnings per hour have increased 273%; while for the same period of time, the adverse effect wage only increased 256%.

Table 3

Comparison of Cane Cutter Productivity to Adverse Effect Wage and Average Earnings Per Hour

Season	Production in Tons Per Hour (1)	Adverse Effect Wage	Average Earnings Per Hour(1)(2)
1964-65	1.446	$1.15	$1.37
1965-66	1.394	$1.25	$1.44
1966-67	1.452	$1.35	$1.64
1967-68	1.516	$1.45	$1.82
1968-69	1.408	$1.55	$1.93
1969-70	1.489	$1.65	$2.10
1970-71	1.485	$1.75	$2.23
1971-72	1.450	$1.85	$2.31
1972-73	1.486	$2.00	$2.54
1973-74	1.394	$2.15	$2.69
1974-75	1.303	$2.45	$3.03
1975-76	1.419	$2.84	$3.58
1976-77	1.512	$3.04	$4.03
1977-78	1.477	$3.23	$4.12
1978-79	1.386	$3.48	$4.39
1979-80	1.417	$3.79	$4.55
1980-81	1.554	$4.09	$5.11
1981-82	n/a	$4.69	n/a
		+256%	+ 273%

Source: (1) Various records of sugar companies obtaining H-2 workers through Florida Sugar Producers, U.S.Sugar Corp.
and Florida Fruit & Vegetable Association
(2) Without Bonus

The Role of the U. S. Department of Labor Employment Services System in Certification for Use of H-2 Workers

FFVA feels the U. S. Department of Labor should retain the authority for certification of shortages of workers through its Employment Services System even though we realize the Farm Placement arm of the U. S. Department of Labor has been virtually decimated over the last decade.

Two decades ago, the U. S. Department of Labor had a strong and dedicated Farm Labor Service within its Employment Services System. Over the years, and particularly since the Judge Richey Court Order in the early 1970's, the Farm Labor Service has been reduced so that it is today virtually non-existent.

This is extremely unfortunate. The Farm Labor Service had formerly (1) the expertise to accurately predict farm labor surpluses and shortages, (2) the personal knowledge of the workers, farm employers and other pertinent labor-related factors in the area, (3) the wherewithal to more quickly fill shortages where possible, declare surpluses and to accurately certify to the shortage where farm workers could not be found, and (4) the confidence of workers and employers so that it could correct any problems that arose.

Although in our estimation, the U. S. Department of Labor no longer has the capability to perform effective placement or other services for both farm employers and farm employees, it could strengthen its Farm Placement System so that it would develop individuals with farm labor expertise within the local State, Regional and Federal Employment Services System. Further, these individuals should not be submerged to the point their farm labor responsibilities and expertise are lost within the overall non-farm Employment Services' responsibilities.

Twenty years ago, farm employers had confidence in the ability of the Farm Labor System to do all possible to find qualified farm workers. The farm workers had confidence they could find available jobs through the Farm Labor Placement System. That confidence is not evident today and the U. S. Department of Labor needs to strengthen the services they perform so they are acceptable to both workers and employers.

An increase in the number of personnel with farm labor expertise within the Employment Service System would assist greatly in obtaining quicker response to real farm labor surpluses or shortages in any given area. An evaluation of the local, area and national availability of farm workers could be done quickly and accurately for purposes of determining the validity of requests for supplemental H-2 workers and certification where necessary could be granted with speed and with confidence that the shortage cannot be reasonably filled by qualified American workers.

The certification for use of H-2 workers should remain within the jurisdiction of the U. S. Department of Labor as it is now with particular emphasis on the role which the U. S. Department of Labor Regional offices play in the Certification process. This would better assure coordination of recruitment for U. S. workers where various states are involved.

Workers' Representation under the H-2 Workers' Program

From time to time, claims are made that the H-2 contract workers are not adequately represented while they are in the U. S. Having had to personally cope with the workers' representatives (liaison officers) in the U. S. for the past 28 years, nothing could be further from the truth.

In our estimation, one of the primary reasons the BWI H-2 Program has persisted for nearly 40 years is the character and capabilities of the liaison staff, who are selected by the workers' Island governments to represent the workers and uphold the contract while the workers are in the U. S.

While in Florida, the H-2 sugar cane cutters, all of whom come from islands in the West Indies (Jamaica, Barbados, St. Lucia, St. Vincent and Dominica) are represented by eleven liaison officers, located in both South Bay and Clewiston. The liaison officers are natives of the West Indies islands from which the workers come. In addition, there is a large office staff who monitor all payrolls submitted by sugar employers. The Chief Liaison Officer of the British West Indies Central Labour Organisation is located in Washington, D. C., with an additional office staff.

Liaison officers constantly check compliance to the annually negotiated contract, conduct payroll audits and are in constant direct contact with workers in the fields and in the 20 housing facilities located in the Glades area. No worker is repatriated for any reason until he has had a chance to consult with a liaison officer and for those few workers who may violate their contracts, the liaison officer must agree that the contract has been violated before the worker is returned to his home island.

Employer Efforts to Obtain and Retain U. S. Workers

Florida's sugar cane employers feel they go far beyond the requirements of the current regulations in order to ensure " U.S. workers" are given every opportunity to cut sugar cane in Florida. They comply with the "Criteria" regulations found at 20 CFR 655.200. In recognition of their responsibility to utilize available American workers to cut sugar cane, employers will accept for employment as a cane cutter any qualified American worker who applies for the job anytime during the harvesting period that H-2 workers are cutting cane. This offer does go far beyond 20 CFR 655.203 (e), which requires employers to provide employment only until 50% of the contract period has elapsed.

Sugar cane employers advance transportation to American workers who indicate a willingness to cut cane even though the advancement of transportation is not the prevailing practice in Florida and not required under 20 CFR 655.202 (b) (5) (i). We feel the advancement of transportation should be determined by the prevailing practice in the area of employment. However, where H-2 workers predominate in a crop activity, such as sugar cane cutting in the Glades area of Florida, we believe it necessary to advance some transportation to fully ensure that the lack of transportation does not deter available Americans within a reasonable distance from accepting the job opportunity.

We do not think it reasonable that potential employers of H-2 workers be required to recruit and transport workers to the area for employment from anywhere in the United States. The requirement under Public Law 414, Title I, Section 101, 15, H (ii) that requires certification by the Secretary of Labor that "...no unemployed workers can be found in the country," should be amended so that it is more reasonable.

The section of the Immigration Act (Public Law 414, Title II, Section 212 (a) (14) dealing with the entrance into the United States of aliens for permanent employment only requires that the U. S. Department of Labor certify the unavailability of "...able, willing, qualified and available... workers ... at the place where the alien is to perform the work...".

It seems to us the impact and potential adverse effect of the presence of temporary workers in seasonal jobs is much less than the impact of workers permitted to come in permanently for permanent jobs. The laws and pertinent regulations governing the test for unavailability of workers for temporary employment should not be as stringent or cover as great a geographic area as the laws and regulations governing the unavailability of workers in jobs where aliens will be allowed to enter on a permanent basis. At the very best, the laws and regulations should be the same.

Sugar cane employers do feel the test for availability of American workers needed in temporary jobs should be broader than the time and place where aliens are to perform the work but not so broad as to include the entire United States.

Each season, sugar employers ADVERTISE locally and in each area where positive recruitment is conducted. Radio, newspaper and handbill advertising is paid for by the sugar employers. Public Service time provided to local Employment Service offices is also utilized. Two positive RECRUITMENTS are conducted each year in over 30 Employment Service offices in Florida. Positive recruitment is also conducted in out-of-State Employment Service offices whenever a sufficient supply of workers justifies doing so.

In the advertising of the job offer and the recruitment of American workers, sugar cane employers have long exhibited a cooperative attitude toward reasonable requests by State and Federal officials. Because H-2 workers do predominate in the cutting of sugar cane, sugar employers feel it necessary to expand the recruitment effort for cane cutters beyond the immediate area of employment. However, the concentrated efforts should be confined to our Region IV States of Florida, Georgia, Alabama, Mississippi, South Carolina, North Carolina, Tennessee and Kentucky. Recruitment efforts outside of the region have been generally unsuccessful for us.

As an example, in 1972, at the request of the U. S. Department of Labor Regional Administrator (RA), the sugar industry sent recruiters to McAllen, Texas, after the United Farm Workers advised the RA they had 500 - 1,000 workers in the Rio Grande area available as cane cutters. Our recruiter spent two weeks in the McAllen - Brownsville area. The UFW Director in the Rio Grande area could provide no workers for us. However, while there, the Employment Service did advertise the job offer through local media and worker service groups. After two weeks of recruiting, only two workers accepted employment but neither showed up to accept transportation to Florida. We can cite many other such examples.

All workers accepted for employment through the recruitment process are provided non-refundable bus tickets, up to a maximum of $75.00, to our receiving center at South Bay, Florida. Workers are met by Monitor Advocates, employed by the Florida Department of Labor & Employment Security, and are given a free physical examination before being assigned to one of the eight sugar cane employers in the Glades area.

Current Contractual Guarantees

Sample Domestic and BWI worker contracts are attached as Exhibits 1, 2, and 3. They include an 8-day training period, a minimum guarantee of $4.69 per hour (current adverse effect wage rate), opportunity to work an average of at least 36 hours per week over the contract period, free rent, 3 meals daily at cost, round trip transportation if the contract is completed and more.

The current adverse effect wage in Florida sugar cane is $4.69 per hour, the highest of any state in the nation. Sugar cane cutters are paid on a piece rate basis and it is anticipated they will average over $5.70 per hour for this season.

CURRENT U. S. DEPARTMENT OF LABOR REGULATIONS ON USE OF H-2 WORKERS

FFVA has concern if it is the intent of Congress to use the H-2 Program as the only "safety valve" should there be a substantial shortage of U. S. workers. The H-2 regulations are now too cumbersome to certify to genuine seasonal and short term labor shortages in Agriculture.

Modification in H-2 regulations and procedures are needed in order to make the program "workable" for growers while at the same time protecting domestic workers against foreign competition. The following recommendations are made:

1. The H-2 regulations provide standards for recruitment procedures which must be met before a shortage of domestic labor is certified. At present, recruiting standards for certification for temporary workers are more stringent than those required for permanent admission of alien workers. Appropriate criteria should be specified for recruiting in the local labor market, determined largely by distance or population factors. This would require amendment to Section 101 (15) (A) (H) (ii) of the Immigration & Nationality Act to change "in this country" to more appropriate wording.

At the same time, both present and prospective new domestic migratory labor sources must be assured access to these jobs.

2. The certification for use of H-2 workers should remain within the jurisdiction of the U. S. Department of Labor as it is now with particular emphasis on the role which the U. S. Department of Labor Regional offices play in the Certification process. This would better assure coordination of recruitment for U. S. workers where various states are involved in the "Mileage or population" factor recommended earlier.

3. The present H-2 regulations (20 CFR Part 655) require that an employer seeking certification for H-2 workers must file a job order with the Employment Service early enough that it is in the U. S. Employment Service's Interstate Clearance System for at least 60 days prior to a date 20 days prior to date of need. This interval should be reduced to 30 days. The USDL should still be required to make a certification decision at least 20 days prior to date of need for H-2 workers. There must also be a way for certification to be granted in shorter periods of time under emergency conditions.

The USDL's computer job bank and the change to recruitment based on a distance or population factor (see 1. above) should enable the Department of Labor to conduct a meaningful search within 30 days.

4. The "Adverse Effect Wage Rate" should be abolished. There is no such requirement for non-agricultural employers of H-2 workers. Payment to H-2 workers of the Fair Labor Standards Act minimum wage (or the State minimum, if higher) or the prevailing wage rate (and prevailing piece rate where appropriate) in the area of employment at the time of employment, whichever is higher, will assure no adverse effect on the wages of U. S. workers similarly employed.

5. The present requirements for free housing and a ceiling on board charges should be amended. Employers should be free to provide housing at no charge or "at cost." Employers should be able to provide meals "at cost." The language of the Fair Labor Standards Act and appropriate Fair Labor Standards Act regulations should govern.

If housing is not available, an employer should be allowed, during an interim period while housing is being constructed, to provide a housing allowance to non-local workers. No employer should be required to provide housing for workers able to commute between home and job on a daily basis.

The cost of constructing housing for single H-2 workers and U. S. migrant workers hired by an employer of H-2 workers is part of the price for receiving certification for H-2 workers.

6. The "assurances" requirement in 20 CFR Part 655 should be reviewed and the requirements covered therein which are already in law or regulation should be deleted. No non-agricultural employer is required to execute such a document.

7. Keep to a minimum and simplify the paperwork required when filing a job order with the Employment Service and requesting certification for H-2 workers. In 1977, three pages were required. In 1980, the number in some areas had

risen to 22. At growers' insistence, the number for 1981 was cut back to 3. (As a prime example of paperwork proliferation, Maryland peach growers had to file 48 pages to obtain Jamaican cooks to cook for their Jamaican H-2 workers.)

8. The proposed requirement that employers pay unemployment compensation and social security taxes on the wages of guest workers and H-2 workers is inequitable. First, the H-2 and guest workers can not receive the benefits of either unemployment compensation or social security. Secondly, employers of West Indian H-2 workers are already contributing a percentage of wages earned by H-2 workers, to the respective West Indian governments for use in social security systems established for their citizens.

9. A specific employer who has demonstrated a need for H-2 workers for a specific crop activity and has repeatedly been certified therefor for three years or more, should be certified for a period of three or more years (to a date certain) and not have to go through an annual "exercise" to demonstrate need. At the end of such period, the full certification procedure may be required to justify another "term certification" of three or more years.

If an employer, "term certified" for one crop (apple pickers,for instance) needs H-2 workers for peach harvest, that grower would have to seek certification for H-2 peach pickers on a yearly basis for three years, then would, assuming demonstrated need for H-2 peach pickers each of the three years, be "term certified" for a period of three or more years for H-2 peach pickers.

An employer who seeks certification for H-2 workers for the first time, would be processed on a yearly basis for three years before being eligible for "term certification."

Such a change in the program would save employers and the Department of Labor and State and local Job Service offices much time and paperwork. Employers who are "term certified" would still be required to abide by all other requirements.

"Term certified" employers would pay travel at the end of the contract period, whatever that may be.

10. Agricultural employer associations should be eligible for and receive certification for H-2 workers for their members. Workers could then be moved from employer-to-employer as needed. This would provide more steady employment for workers and would probably result in a need for fewer total workers. The question of whether the association or a farmer member of the association is the employer would have to be resolved and made a matter of law.

CONCLUSIONS

In conclusion, FFVA feels a properly administered legal supplementary labor program of non-resident alien workers is an essential part of any solution to the illegal alien and refugee problem now being experienced in the United States.

Whether the supplementary program should be accomplished through the H-2 Program alone or whether it should also include a separate "guest worker" program depends on what this Congress decides on the amnesty question.

We are gratified that the cover letter from the Attorney General to the leadership of both the Senate and House concerning the Omnibus Immigration Control Act states "The existing H-2 temporary worker program would continue to operate."

We strongly urge this Committee to back the continuation of the H-2 Program as a part of the viable overall Immigration and Refugee Policy.

Attachments:
EXHIBIT 1 - Domestic Worker Contract - English and French
EXHIBIT 2 - Domestic Worker Contract - English and Spanish
EXHIBIT 3 - BWI Worker Contract - English

ACCORD POUR L'EMPLOI DES OUVRIERS AGRICULTURELS DES ETATS UNIS

Cet Accord rédigé le ______________________________ entre ______________________________. Floride

après ceci nommé l'employeur, et ______________________________, après ceci nommé l'ouvrier.

ARTICLE 1
DISPOSITIONS GENERALES

Durant la période du jour ________ de ______________________

au jour __________ de ______________________ l'employeur convient de fournir un emploi agriculturel à l'ouvrier et l'ouvrier convient de faire le travail demandé de lui d'une manière efficace et avec bonne application, attention, et diligence sous la direction et la supervision de l'employeur.

Pour l'intention de ce contrat un jour de travail consiste en 8 heures chaque jour sauf les dimanches, le Jour de l'An, le 4 juillet, le Jour de Travail, le Jour des Actions de Grâces, ou le Jour de Noël.

ARTICLE II
PREFERENCE

L'employeur convient de donner aux ouvriers engagés sous son contrat la préférence de soutenir leur emploi envers les étrangers non-immigrants.

ARTICLE III
LOGEMENT

L'employeur convient de fournir aux ouvriers à l'arrivée au lieu de travail et durant la période entière du travail, sans frais aux ouvriers, des facilités sanitaires et des logements hygiéniques qui conforment à tous les règlements convenables locaux des Règlements Fédéraux et de l'Etat.

ARTICLE IV
ASSURANCE POUR MALADIES OU BLESSURES POUR RAISONS DE TRAVAIL

L'employeur convient de fournir sans frais aux ouvriers une garantie en ce qui concerne les soins médicaux et de dédomagement pour les lésions personnelles venant de, et durant, la période de travail de l'ouvrier et pour la maladie contractée durant ce travail et directement attribuable au travail auquel l'ouvrier est engagé et requis sous les lois applicables de l'État de la Floride, et avec les exigences de la Section 655.202(b)(2)(i), Chapitre V, Titre 20 du Code des Règlements Fédéraux.

ARTICLE V
VERSEMENT DES SALAIRES

a. L'employeur convient de payer à l'ouvrier un salaire de pas moins de ________ à l'heure. Là où le tarif prédominant est plus élevé pour le même genre de travail, le tarif le plus élevé sera payé. Le tarif pour travail à la pièce sera réglé pour produire un total de paye au moins équivalent au tarif à l'heure indiqué dans cet Article, et en aucun cas l'ouvrier ne sera payé moins que ce tarif.

b. L'employeur convient de payer les salaires suivant la pratique prédominante pour ce travail mais en aucun cas pas moins souvent que chaque deux semaines.

c. Si un ouvrier travail le dimance ou un jour de fête mentionés dans Article I, il sera payé pour ce travail à pas moins du tarif prédominant pour le même genre de travail dans cette région pour ce jour et en aucun cas pas moins que le tarif spécifié dans la partie a de cette Section.

ARTICLE VI
OUTILS ET EQUIPEMENT

L'employeur doit fournir à l'ouvrier, sans frais à tel ouvrier, tous les outils ou équipement nécessaires pour accomplir le travail qui lui est assigné par ce contrat.

ARTICLE VII
DEDUCTIONS

L'employeur convient de ne prendre aucune déduction du salaire de l'ouvrier sauf pour celles mentionées dans la Section 655.202(b)(13), Chapitre V, Titre 20 du Code des Règlements Fédéraux suivants:

a. Les déductions stipulées par la loi.

b. Payement en avance contre les salaires.

c. Payement pour articles de consommation produits par l'employeur et que les ouvriers ont acheté volontairement.

d. La valeur des repas fournis par l'employeur, mentionnées dans Article XI.

e. Excès de payement du salaire.

f. Une perte à l'employeur causée par le refus d'un ouvrier ou de son omission négligente de rendre les outils ou équipement, ou dû à la destruction volontaire de cette propriété, pourvu que dans aucun cas la perte ne soit pas plus grande que la valeur raisonnable de la propriété détruite ou perdue au moment où elle fut fourni à cet ouvrier, moins sa détérioration normale et sa valeur raisonnable quand elle fut rendue à l'employeur.

g. Les déductions pour les frais de transport comme mentionnés dans Article XI.

Les déductions énumérées dans les sections b, c, e et f pour chaque jour de paye ne surpasseront pas 10 pour-cent du montant total dû ce jour de paye: bien que l'employeur ne doit pas déduire plus que 50 pour-cent du salaire de l'ouvrier dans une période de paye, pour les avances faites à l'ouvrier à son arrivée au lieu de travail pour repas et habits nécessaires: bien qu'à la termination du contrat de travail, ou si l'ouvrier abandonne son contrat, l'employeur peut déduire de la paye finale de cet ouvrier toutes dettes qui sont dûes à l'employeur dans les sections b, c, e, et f de cet Article au moment de la termination ou de l'abandon de ce contrat.

ARTICLE VIII
TRANSPORT

L'employeur fournira ou payera pour les frais raisonnables de transport et de subsistence du lieu de recrutement au lieu de travail, une somme qui ne dépassera pas le total de $__________ pourvu que l'louvrier complète 50 pour-cent de la période de son contrat. Une avance sur la subsistence allouée pour chaque repas sera limitée à ⅓ du maximum du coût de subsistence par jour comme stipulé dans Article XI de cet Accord. L'employeur peut, cependant, déduire tel coût de transport et de subsistence de la paye de l'ouvrier stipulé dans Article VII. Une fois que l'ouvrier aura completé 50 pour-cent de la période de son contrat, l'ouvrier aura le droit d'être remboursé le coût total de transport et de subsistence, ou la somme avancée par l'employeur, ou la somme entre les deux la plus grande. Si l'ouvrier complète son contrat, l'employeur payera les frais de transport de retour du lieu de travail au lieu de recrutement, sauf quand l'ouvrier ne retourne pas au lieu de recrutement et va à un autre travail où le transport de retour est payé par son nouvel employeur.

Tous les transports seront par transportation publique ou autre mode de transport convenable qui est approuvé par le Interstate Commerce Commission (Agence du Commerce Inter-Etat) et autres réglements applicables. L'employeur convient de fournir le transport de l'ouvrier des demeures au lieu de travail jusqu'aux champs de travails ainsi que le retour sans frais à l'ouvrier.

ARTICLE IX
GARANTIE DE TRAVAIL

L'employeur garantit à l'ouvrier l'occasion de travailler pour l'équivalent à l'heure d'au moins ¾ des jours de travail (comme défini dans Article I) de la période totale pendant laquelle le contrat de travail et tous ses suppléments sont en effet, commençant avec le lendemain de l'arrivée de l'ouvrier au lieu de travail et finissant à la date de termination spécifiée dans ce contrat ou dans ses suppléments, s'il y en existe.

Si l'employeur, durant telle période de travail, fournit moins de travail comme requis dans cette provision, l'ouvrier sera payé le montant qu'il aurait gagné, comme s'il avait, en effet, travaillé les heures garanties équivalentes aux nombres de jours. Là où les salaires sont payés à base de par pièce on se servira de la moyenne de paye à l'heure pour calculer le montant payé sous cette garantie.

En déterminant si la garantie de travail a été satisfaite, les heures où l'ouvrier n'a pas travaillé durant un jour de travail quand son employeur les lui a offert, et toutes les heures de travail accomplies, seront comtées en calculant les jours de travail requis pour satisfaire cette garantie.

Sans préjudice à la garantie de travail pour travail disponible pour l'équivalent à l'heure d'au moins ¾ des jours de travail durant le total de la période du contrat de travail, l'employeur fournira assez de travail pour permettre à l'ouvrier qui peut et veut travailler, de gagner une somme de pas moins du prix de subsistence plus $14.00 pendant n'importe quelle période consécutive de deux semaines chacune, ou de payer à l'ouvrier une allocation d'une somme, qui ajoutée à la somme gagnée par l'ouvrier durant cette période de 2 semaines, égalerait le minimum de la paye stipulée.

Témoin ______________________________

Témoin ______________________________

ARTICLE X
DROIT D'ACHATS AU LIEU DE CHOIX

L'ouvrier sera libre de faire des achats pour des articles de son usage personnel au lieu de son choix, et sera accordé l'occasion un fois par semaine d'aller là où il peut faire tels achats. Quand le lieu de travail ne se trouve pas à une distance facilement atteinte à pied de la ville offrant les objets désirés, et que le transport publique n'est pas disponible, l'employeur fournira le mode de transport.

ARTICLE XI
REPAS

Quand l'employeur fournit les repas aux ouvriers, ils seront fournis au coût de distribution de l'employeur, mais en aucun cas les frais ne seront pas plus que $__________ plus la taxe, pour trois repas.

ARTICLE XII
DISCRIMINATION D'EMPLOI

L'employeur n'exercera aucune discrimination sociale ou économique pour ses conditions d'emploi envers aucun ouvrier.

ARTICLE XIII
MAINTIEN DES REGISTRES ET COMPTE-RENDU DE TRAVAIL ET DE SALAIRES

Chaque employeur maintiendra un registre précis et suffisant de chaque ouvrier dans son emploi des salaires et des heures travaillées. Non pas limité, mais y compris dans ce registre seront les renseignements montrant le nombre d'heures travaillées chaque jour, le montant du salaire, la quantité de travail faite chaque jour quand du travail à la pièce est fait, et les périodes de temps pour lesquelles l'ouvrier doit recevoir un subsistence et tels renseignements additionnels qui peuvent être nécessaries pour manifester l'exécution de ce contrat.

L'employeur rendra disponible le lieu de travail et ses registres comme requis ci-dessus, à tout temps raisonnable pour l'inspection par l'ouvrier ou de son représentant. L'employeur fournira à l'ouvrier un compte-rendu contenant les renseignements ci-dessus mentionnés pour chaque période de paye au moment du payement du salaire.

ARTICLE XIV
PROTECTION DES INFLUENCES IMMORALES ET ILLEGALES

L'employeur convient de prendre tous les moyens possibles pour éloigner du lieu de travail les joueurs d'argent professionnels, les vendeurs de liqueurs intoxicantes et les personnes engagées aux activitées immorales et illégales.

ARTICLE XV
TERMINATION AUTRE QUE A LA DATE PREVUE

A. L'employeur peut terminer l'emploi de l'ouvrier ci-dessous mentionné à tout moment en donnant à l'ouvrier au moins dix jours d'avis par écrit et l'emploi de l'ouvrier ci-dessous mentionné sera terminé à l'expiration de cet avis, ou à son départ du lieu de travail comme spécifié dans cet Accord, lequel arrivera le premier, sujet aux provisions de l'Article IX de cet Accord. Pourvu, cependant, que dans l'éventuelle termination du contrat par un accord mutuel entre l'employeur et l'ouvrier, ou par l'employeur pour raisons hors de son contrôle, l'employeur sera responsable pour la garantie d'emploi stipulée dans Article IX de cet Accord pour la période commençant le lendemain de l'arrivée de l'ouvrier au lieu de travail et finissant à la date de termination du contrat. Là où un acte de force majeure survient l'employeur peut par avis à l'ouvrier terminer le contrat sur-le-champ ou à une date subséquente qui sera spécifiée dans l'avis et dans la garantie d'emploi dans Article IX, cessera de la date de termination du contrat. Un acte de force majeure voudra dire une gelée, une tempête de grêle, une inondation ou toute autre calamité naturelle, autre qu'une sécheresse, de tel genre à rendre impossible l'accomplissement du contrat.

B. Termination pour cause. Si l'ouvrier ne peut ou ne veut pas produire le travail suffisant pour satisfaire le minimum requis pour le travail à la pièce généralement signalé par l'employeur, ou si l'ouvrier manque ou refuse de travailler d'une manière convenable ou manque de travailler conformément aux termes de cet Accord, ou si l'ouvrier s'est mal conduit ou, a commis une indiscipline, ou si l'ouvrier s'engage à travailler pour quelque autre personne autre que l'employeur, ou le cultivateur pour qui il doit travailler, ou si l'ouvrier désobéit les lois des Etats Unis, l'employeur aura le droit de terminer son emploi immédiatement. Le manque de se rendre au travail trois jours de suite sera considéré comme d'avoir donné sa démission. Quand l'emploi de l'ouvrier sera terminé conformément à ce sous-paragraphe, les garanties d'emploi fournies dans Article IX ci-dessus ne seront pas applicables, et l'employeur n'aura aucune obligation de payer les frais ne transport de retour.

ARTICLE XVI
EXECUTION DU CONTRAT

A. Tous conflits en ce qui concerne l'interprétation ou l'exécution de cet Accord seront résolus exclusivement par le procédé suivant pour les conflits:

(1) Tous conflits seront présentés premièrement au surveillant de l'ouvrier.

(2) Si le conflit entre l'ouvrier et le surveillant ne peut pas se résoudre, le conflit sera écrit, déclarant toutes les circonstances du conflit ou des demandes ainsi que les réparations demandées, si elles existent, et ce document sera présenté au représentant de l'employeur ainsi qu'au Représentant des Ouvriers du Département du Commerce de la Floride (Fla. Dept. of Commerce Domestic Worker Liaison) à South Bay, Floride, à moins de cinq (5) jours de l'occurrence dont on se plaint, ou à moins de cinq (5) jours qui suivent le jour de paye en cas de réclamations sur la paye. Ces représentants se réuniront promptement dans un sincère effort pour résoudre le conflit. Ils peuvent, par entente mutuelle, donner audience ou faire d'autres enquêtes, comme il leur semble convenable.

3. Si le conflit n'est pas résolu par la section 2 ci-dessus et si le conflit est lié à nue affaire comprise sous les règles du U.S. Employment Service (le Service d'Emploi des Etats Unis) qui peut être le sujet d'une plainte sous les procédés donnés dans les Sections 20CRF 658.400-423, celui qui porte plainte avec le ES à moins de 14 jours après avoir reçu la décision de l'employeur dans la Section 2. Quelque soit l'audience disponible nommée dans le section du procédé pour les conflits ES, elle sera demandée par celui qui porte plainte.

B. Si un procès est fait contre ce contrat ou contre cet emploi, il sera présenté pour procès au tribunal de la cour fédérale ou à la cour de l'Etat de la Floride et tous les participants se soumettront à la juridiction personnelle des tribunaux de la Floride pour ce procès. En cas de manque de poursuite d'une redresse légale à moins de trente (30) jours après avoir reçu la décision finale du procédé de plainte dans la Section A, ci-dessus, ces remèdes légaux seront jugés renoncés et telle décision ne pourra plus être poursuivie. Tous les participants, par ceci, formellement renoncent tous droits qu'ils pourraient avoir d'initier un procédé légal ou de faire procès dans aucun tribunal hors de la Floride pour aucun sujet qui concerne ce contrat ou emploi ci-dessous mentionné. Si un ouvrier essaie d'initier un procès ou d'initier un procédé hors de la Floride ou hors des limites de temps mentionnés ci-dessus, obligeant l'employeur de consulter un avocat pour faire respecter les provisions du contrat, l'ouvrier, par ceci, consent de payer les dépenses raisonnables pour les avocats de l'employeur pour cette action. C'est l'intention de tous les participants de résoudre promptement toutes les disputes et demandes de ce contrat et du lieu de travail et que n'importe quels procès pour plaintes non-résolues seront poursuivies aux tribunaux de la Floride.

Par ma signature ci-dessous, je certifie, comme ouvrier, que je suis ou un citoyen des E.U. ou que je réside légalement aux E.U. et que j'ai le droit légalement de travailler aux E.U.

Signature de L'Ouvrier ______________________________

Addresse permanente de l'ouvrier ______________________________

____

Lieu de Recrutement ______________________________

Région d'Emploi: FLORIDE ______________________________

Employeur: ______________________________

Par (Signature) ______________________________

Titre Officiel: Représentant Authorisé.

CE CONTRAT EST DESTINE SEULEMENT POUR LA COUPE DU SUCRE DE CANNE.

(Imprimé 1980)

AGREEMENT FOR THE EMPLOYMENT OF UNITED STATES AGRICULTURAL WORKERS

This Agreement made on ______ ____________________ between ______________________________, Florida

hereinafter called the employer, and ______________________________, hereinafter called the worker.

WITNESSETH:

ARTICLE I
GENERAL PROVISIONS

During the period from the ________ day of ____________________ to the ________ day of ____________________ the employer agrees to provide agricultural employment to the worker and the worker agrees to perform the work required of him in a good and workmanlike manner and with proper application, care and diligence under the direction and supervision of the employer.

For purposes of this contract a work day consists of 8 hours on any day except Sunday, New Year's Day, July 4, Labor Day, Thanksgiving or Christmas.

ARTICLE II
PREFERENCE

The employer agrees to give to the workers hired under this contract preference in retention of jobs over non-immigrant aliens.

ARTICLE III
LODGING

The employer agrees to furnish the worker upon his arrival at the place of employment and throughout the entire period of employment, without cost to the worker, sanitary facilities and hygienic lodgings which comply with all pertinent local, state and Federal Regulations.

ARTICLE IV
INSURANCE FOR OCCUPATIONAL INJURY OR DISEASE

The employer agrees to provide at no cost to the worker the guarantees with respect to medical care and compensation for personal injury arising out of and in the course of the worker's employment hereunder and for disease contracted in the course of such employment and directly attributable to the work in which the worker is engaged required under the applicable state laws of Florida, and with the requirements of Part 655.202 (b) (2) (i), Chapter V, Title 20 of the Code of Federal Regulations.

ARTICLE V
PAYMENT OF WAGES

a. The employer agrees to pay wages to the worker at not less than $________ per hour. Where the prevailing rate in the area for the work being performed is higher, the higher rate shall be paid. Piece rates shall be designed to produce hourly earnings at least equivalent to the applicable hourly rates indicated in this Article, and in no event shall the worker be paid less than such hourly rate.

b. The employer agrees to make payment of wages in accordance with prevailing practice in the activities but in no event less often than bi-weekly.

c. If a worker works on Sunday or any of the holidays specified in Article I, he shall be paid for such work at not less than the prevailing rate for similar work performed in the area on such day and in no case less than the rate specified in part a. of this section.

ARTICLE VI
TOOLS AND EQUIPMENT

The employer shall furnish the worker, without cost to such worker, all tools, supplies or equipment required to perform the duties assigned to him under this contract.

ARTICLE VII
DEDUCTIONS

The employer agrees to make no deductions from the worker's wages except in accordance with Part 655.202 (b) (13), Chapter V, Title 20 of the Code of Federal Regulations as follows:

a. Those deductions provided by law.
b. Payment for advances against wages.
c. Payment for articles of consumption produced by the employer which the worker has purchased voluntarily.
d. Value of meals supplied by the employer in accordance with Article XI.
e. Overpayment of wages.
f. Any loss to the employer due to a worker's refusal or negligent failure to return any property furnished to him by the employer, or due to such worker's willful destruction of such property; provided that in no case shall such loss exceed the reasonable value of such property at the time furnished to such worker less normal wear and tear and, in the case of property returned to the employer in damaged condition, its reasonable value at the time furnished less normal wear and tear and less its reasonable value when returned to the employer.
g. Deductions for transportation costs as permitted under Article VIII.

The deductions under b, c, e, and f in each pay period shall not exceed 10 percent of the total amount of wages earned in that pay period: provided that the employer may deduct not in excess of 50 percent of the worker's wages for any pay period for advances to the worker upon the arrival at the place of employment for food and necessary clothing; provided further that at the termination of the work contract, or if the worker abandons his contract, the employer may deduct from such worker's final wage payment any debts which may be due the employer under subparagraphs b, c, e, and f of this Article at the time the contract is abandoned or terminated.

ARTICLE VIII
TRANSPORTATION

Employer will provide or pay for the reasonable cost of transportation and subsistence from the place of recruitment to the place of employment, up to $______________ total, provided the worker completes 50 per cent of the contract period. Advance of subsistence allowance per meal will be limited to ⅓ of the maximum daily board charge as stipulated in Article XI of this agreement. The employer may, however, deduct such transportation and subsistence costs from worker's earnings as provided for in Article VII. Upon completion of 50 per cent of the contract period, the worker shall be entitled to reimbursement of the total cost of transportation and subsistence, or the amount advanced by the employer, whichever is the greater. If the worker completes his contract, the employer will pay the cost of return transportation from the place of employment to the place of recruitment except when the worker is not returning to the place of recruitment and has subsequent employment under which return transportation is paid by his new employer.

All transportation will be by common carrier or other adequate transportation facilities which comply with Interstate Commerce Commission and other applicable regulations. The employer agrees to provide transportation from the worker's on-the-job site living quarters to the fields and return without cost to the worker.

ARTICLE IX
EMPLOYMENT GUARANTEE

The employer guarantees the worker the opportunity for employment for the hourly equivalent of at least ¾ of the work days (as defined in Article I) of the total period during which the work contract and all extensions thereof are in effect, beginning with the day after the worker's arrival at the place of employment and ending on the termination date specified in this contract or its extensions if any.

If the employer affords the worker during such period less employment than required under this provision, the worker shall be paid the amount which he would have earned had he, in fact, worked for the guaranteed hourly equivalent of the number of days. Where wages are paid on a piece rate basis, the worker's average hourly earnings shall be used for the purpose of computing the amount paid under this guarantee.

In determining whether the guarantee of employment has been met, any hours which the worker fails to work during a work day when he is afforded the opportunity to do so by the employer, and all hours of work performed, shall be counted in calculating the days of employment required to meet the satisfaction of this guarantee.

Without prejudice to the employment guarantee for available work for the hourly equivalent of ¾ of the work days during the total contract employment period, the employer will provide sufficient work to enable the worker being willing and able to work, to earn a sum not less than the board charged plus $14.00 during any consecutive period of two weeks each, or pay the worker an allowance of a sum, which added to the sum earned by the worker during such two weeks period, would equal these stipulated minimum earnings.

Witness______________________________

Witness______________________________

ARTICLE X
RIGHT TO PURCHASE AT PLACE OF CHOICE

The worker shall be free to purchase articles for his personal use in places of his own choice, and shall be given an opportunity once each week to go to locations where he can make such purchases. Where the location of employment is not within walking distance of the town offering the desired articles, and public transportation is not available, the employer will make arrangements for transportation.

ARTICLE XI
MEALS

When the employer furnishes meals to the worker, they shall be furnished at cost, but in no event shall the charge to worker exceed $________ plus tax, for three meals.

ARTICLE XII
DISCRIMINATION IN EMPLOYMENT

The employer shall not practice social or economic discrimination in conditions of employment against any worker.

ARTICLE XIII
MAINTENANCE OF RECORDS AND STATEMENT OF WORK AND EARNINGS

Each employer shall keep accurate and adequate records in regard to the earnings and hours of employment of each worker in his employ. Such records shall include, but shall not be limited to, the information showing the number of hours worked each day, the rate of pay, the amount of work performed each day when piece work is performed, and the periods for which the worker is entitled to receive subsistence, and such additional information as may be necessary to demonstrate compliance with this contract. The employer shall make the place of employment and his records as required above available at any reasonable time for inspection by the worker or his representative. The employer shall furnish the worker a statement containing the above listed information for each pay period at the time of wage payment.

ARTICLE XIV
PROTECTION FROM IMMORAL AND ILLEGAL INFLUENCES

The employer agrees to take all responsible steps to keep professional gamblers, vendors of intoxicating liquors and persons engaged in immoral and illegal activities away from the place of employment.

ARTICLE XV
TERMINATION AT OTHER THAN NORMAL EXPIRATION DATE

A. The employer may terminate the worker's employment hereunder at any time by giving to the worker at least ten days' notice in writing and the worker's employment hereunder shall end upon the expiration of such notice, or upon his departure from the area of his employment as specified in this Agreement, whichever shall first occur, subject to the provisions of Article IX of this Agreement. Provided, however, that in the event of a contract termination by mutual agreement between the employer and the worker, or by the employer for reasons beyond his control, the employer shall be responsible for the employment guarantee provided for in Article IX of this Agreement for the period beginning on the day after the worker's arrival at the place of employment and ending on the date of the contract's termination. Where an act of God occurs the employer may by notice to the worker terminate the contract forthwith or as from such subsequent date as shall be specified in the notice and the employment guarantee in Article IX shall cease from the date of termination of the contract accordingly. An act of God shall mean any frost, hail-storm, flood or other natural calamity, other than drought, of such a character as to make further fulfillment of the contract impossible.

B. Termination for Cause. If the worker is unable or unwilling to produce sufficient work to meet the minimum piece rate standard generally applied by the Employer, or if the worker fails or refuses to work in a good and workmanlike manner or fails to work in accordance with the terms of this agreement, or if the worker has committed an act of misconduct or indiscipline, or if the worker engages in work at any time for any other person than the Employer, or the farmer to whom he has been assigned, or if the worker violates any law of the United States, the Employer shall be entitled immediately to terminate his employment hereunder. Failure to report for work on three consecutive work days shall be deemed a quit. When the worker's employment is terminated pursuant to this subparagraph, the employment guarantees provided in Article IX above shall not be applicable, and the Employer shall have no obligation to pay return transportation costs.

ARTICLE XVI
CONTRACT ENFORCEMENT

A. All disputes concerning the interpretation or application of this agreement shall be resolved exclusively by the following grievance procedure.

(1) All disputes shall first be presented to the employer's supervisor.

(2) If not resolved in discussions with the supervisor, all such disputes shall be reduced to writing, stating the facts of the claim or dispute and any relief requested, and such written grievance shall be delivered to both Employer's designated representative and to the Fla. Department of Commerce Domestic Worker Liaison Representative in South Bay, Florida, within five (5) days of the occurrence complained of, or within five (5) days after pay day in the case of wage claims. These representatives shall meet promptly in an earnest effort to resolve the dispute. They may, by mutual agreement, hold a hearing or make other investigation as they may agree to be appropriate.

(3) If the grievance is not resolved in Step 2 above and if the grievance involves a matter covered by U. S. Employment Service regulations which may be the subject of a complaint under the procedures set forth in 20 CFR Sections 658.400-423, the grievant shall file his complaint with the ES within 14 days after receiving the employer's decision in Step 2. Any hearing available as a part of the ES complaint procedure shall be requested by the grievant.

Any grievance not filed in writing in the manner and time and any grievance not timely advanced through all the procedures specified above shall be forever waived and barred and no later suit may be filed concerning matters related to the employment.

B. Any suit filed on this contract or employment shall be filed in the Federal or State Courts in Florida and all parties hereby submit to personal jurisdiction of the Courts in Florida for this purpose. In the event of failure to pursue such legal remedy within thirty (30) days of receipt of the final decision in the grievance procedure in A above, any such legal remedies shall be deemed waived and such decision shall not be subject to further challenge. All parties hereby expressly waive any rights they may have to institute any administrative proceeding or to file suit in any court outside Florida on any matter related to this contract or the employment thereunder. If any employee attempts to file suit or institute any compulsory process outside Florida or outside the time limitations stated above requiring Employer to employ counsel to enforce these provisions of the contract, the employee hereby agrees to pay Employer's reasonable counsel fees in such action. It is the intent of all parties to resolve all disputes and claims under this contract quickly and at the job site and that any suits on unresolved grievances shall be processed in the courts in Florida. This contract shall be interpreted in all respects pursuant to the laws of Florida.

By my signature below, I as the worker certify that I am either a U. S. citizen or a legal resident of the U. S. and can legally work in the U. S.

Worker's Signature______________________________

Worker's Permanent Address______________________________

____

Place of Recruitment______________________________

Area of Employment: FLORIDA______________________________

Employer______________________________

By (Signature)______________________________

Official Title: Authorized Representative

THIS CONTRACT IS FOR SUGAR CANE CUTTING ONLY

(Printed [illegible])
(Over)

CONVENIO DE EMPLEO DE TRABAJADORES AGRICOLAS DE LOS ESTADOS UNIDOS

Este Convenio hecho en ______________________ entre ______________________, Florida,

que en lo sucesivo se llamara el empleador, y ______________________ que en lo sucesivo se llamara el trabajador,

/ 'TIGUADO:

ARTICULO I
DISPOSICIONES GENERALES

Durante el periodo desde el dia ________ de ______________________ de ______________________ hasta el dia ______________________ ________ de ______________________ de ______________________ el empleador conviene en proveer empleo agricola al trabajador, y el trabajador conviene en realizar el trabajo de el requerido en una forma buena y apropiada y con la debida aplicacion, cuidado y diligencia bajo la direccion y supervision del empleador.

A los efectos de este contrato, un dia de trabajo consiste en 8 horas en cualquier dia excepto domingos, el Dia de Ano Nuevo, el 4 de julio, el Dia del Trabajo, el Dia de Dar Gracias o Navidad.

ARTICULO II
PREFERENCIA

El empleador conviene en dar al trabajador empleado bajo este contrato preferencia en mantener el empleo sobre extranjeros no inmigrantes.

ARTICULO III
ALOJAMIENTO

El empleador acuerda en dar al trabajador desde su arribo al lugar de empleo y durante todo el periodo de empleo, sin costo para el trabajador, facilidades de vivienda y viviendas higienicas, que cumplan con todas las pertinentes regulaciones locales, del Estado y federales.

ARTICULO IV
SEGURO POR LESIONES O ENFERMEDADES CON MOTIVO DE LA OCUPACION

El empleador acuerda proporcionar sin costo para el trabajador las garantias con respecto a asistencia medica y compensacion por lesiones personales que sean producidas como consecuencia y con motivo del trabajo bajo este empleo y por enfermedades contraidas durante el empleo y que sean directamente atribuibles al trabajo realizado por el trabajador requeridas bajo las leyes aplicables del Estado de la Florida y con los requerimientos de la Parte 655.202 (b) (2) (i), Capitulo V, Titulo 20 del Codigo de Regulaciones Federales.

ARTICULO V
PAGO DE SALARIOS

l empleador acuerda pagar al trabajador un salario de no menos de $________ por hora. En donde la tarifa predominante en el area para el trabajo que se realiza es mayor, la tarifa mayor debe ser pagada. La tarifa por pieza o a destajo sera designada para producir la ganancia por hora por lo menos equivalente a la tarifa por hora indicada en este Articulo y bajo ninguna circunstancia sera el trabajador pagado menos que la referida tarifa por hora.

b. El empleador acuerda pagar los salarios de acuerdo con la practica reinante en este empleo pero bajo ninguna circunstancia con menos frecuencia que cada dos semanas.

c. Si un trabajador trabaja el domingo o cualquier dia de fiesta especificado en el Articulo I, se le pagara por ese trabajo a no menos de la tarifa predominante en el area por el trabajo realizado en semejante dia y en ningun caso menos de la tarifa especificada en la parte a de esta seccion.

ARTICULO VI
HERRAMIENTAS Y EQUIPO

El empleador debe suministrar al trabajador, sin costo alguno para el trabajador, todas las herramientas, materiales o equipo requeridos para realizar las obligaciones asignadas a el bajo este contrato.

ARTICULO VII
DEDUCCIONES

El empleador conviene en no hacer deducciones del salario del trabajador con las excepciones siguientes, de acuerdo con la Parte 655.202 (b) (13), Capitulo V, Titulo 20 del Codigo de Regulaciones Federales:

a. Las deducciones previstas en la Ley.

b. Pagos por adelantos contra salarios.

c. Pago por articulos de consumo producidos por el empleador los cuales el trabajador haya comprado voluntariamente.

d. El valor de comidas suministradas por el empleador de acuerdo con el Articulo XI.

e. Exceso en el pago de salarios.

f. Cualquier perdida del empleador debida a negacion del trabajador u omision negligente en devolver cualquier propiedad suministrada a el por el empleador, o debida a la intencional destruccion de esa propiedad pro parte del trabajador; siempre que en ningun caso semejante perdida exceda del valor razonable de la referida propiedad al momento de ser suministrada a dicho trabajador menos el normal uso y desgaste, y en el caso de que la propiedad sea devuelta al empleador en condiciones dañadas, su valor razonable al tiempo que fue suministrada menos el normal uso y desgaste y menos su valor razonable cuando sea devuelta al empleador.

g. Deducciones por costo de transportacion permitidas bajo el Articulo VIII.

Las deducciones bajo las letras b, c, e, y f en cada periodo de pago no deben de exceder del 10 por ciento del total del salario ganado en ese periodo de pago; conviniendose que el empleador no puede deducir en exceso del 50 por ciento del salario del trabajador en cualquier periodo de pago por adelantos al trabajador desde su arribo al lugar de empleo para comida y ropas necesarias; se conviene ademas que a la terminacion del contrato de trabajo, o si el trabajador abandona su contrato, el empleador puede deducir al citado trabajador de su salario final cualquier deuda que pueda ser debida al empleador bajo los subparrafos de las letras b, c, e, y f de este Articulo al momento que el contrato sea abandonado o terminado.

ARTICULO VIII
TRANSPORTACION

El empleador proveera o pagara por el costo razonable de transportacion y subsistencia desde el lugar de reclutamiento hasta el lugar de empleo, hasta un total de $______________ siempre y cuando el trabajador complete el 50% del periodo de tiempo contratado. Los avances de asignacion de subsistencia por cada comida estaran limitados a ⅓ del cargo maximo diario segun se estipula en el Articulo XI de este Convenio. El empleador puede, sin embargo, deducir del salario del trabajador aquellos costos de transportacion y subsistencia segun se estipula en el Articulo VII. Una vez completado el 50% del periodo de tiempo del contrato, el trabajador tendra derecho a ser reembolsado del costo total de transportacion y subsistencia, o la cantidad avanzada por el empleador, cual de las dos sea la mayor. Si el trabajador completa su contrato, el empleador pagara el costo del transporte de vuelta del lugar de empleo al lugar de reclutamiento, excepto cuando el trabajador no vuelva al lugar de reclutamiento y tenga otro empleo subsiguiente bajo el cual el transporte de retorno es pagado por su nuevo empleador.

Toda la transportacion sera por transporte publico corriente u otras facilidades de transportacion que esten en conformidad con el Interstate Commerce Commission (Comision de Comercio Inter-Estatal) y otras regulaciones aplicables. El empleador conviene en proveer transporte para los trabajadores desde las viviendas en el trabajo al campo del trabajo y retorno sin costo alguno para el trabajador.

ARTICULO IX
GARANTIA DE EMPLEO

El empleador garantiza al trabajador la oportunidad de empleo por el numero de horas [illegible]valentes a por lo menos ¾ partes de los dias de trabajo (segun definicion en el Articulo [illegible] periodo total durante los cuales el contrato de trabajo y sus extensiones estan en efecto, empezando con el dia siguiente de la llegada del trabajador al lugar de empleo y terminado en la fecha de terminacion especificada en este contrato o su extension si alguna.

Si el empleador proporciona al trabajador durante ese periodo menos trabajo que el requerido bajo esta clausula, el trabajador debera ser pagado la cantidad que hubiera ganado si hubiera en efecto trabajado por el numero de horas equivalentes garantizado. En donde los salarios son pagados por pieza o a destajo, el promedio de ganancia por hora del trabajador sera usado con el proposito de computar la cantidad pagada bajo esta garantia.

Al determinar si la garantia de empleo se ha cumplido, cualesquier horas que el trabajador deje de trabajar durante un dia de trabajo en que le es proporcionado la oportunidad de trabajar por el empleador, y todas las horas de trabajo realizado, deben ser contadas al calcular los dias de trabajo requeridos para llenar el cumplimiento de esta garantia.

Sin detrimento de la garantia de empleo en trabajo disponible por las horas equivalentes a ¾ de los dias de trabajo durante el periodo total de empleo contratado, el empleador proveera suficiente trabajo como para permitir al trabajador deseoso y capaz de trabajar, percibir una suma no menor a lo que se le cargue por alojamiento mas $14.00 durante cualquier periodo consecutivo de dos semanas cada uno, o pagarle al trabajador una cantidad que sumada a lo que gane el trabajador durante ese periodo de dos semanas equivalga a estos estipulados salarios minimos.

Testigo ______________________

Testigo ______________________

ARTICULO X
DERECHO DE COMPRAR EN EL LUGAR DE SU ELECCION

El trabajador es libre de comprar articulos para su uso personal en el lugar de su eleccion, y debe proveersele la oportunidad una vez a la semana de ir a una localidad donde pueda realizar esas compras. Donde la localizacion del empleo no se encuentra a una distancia en que se pueda caminar al lugar donde se ofrecen los articulos necesarios, y no hay transporte publico disponible, el empleador hara arreglos para los transportacion.

ARTICULO XI
COMIDAS

Cuando el empleador suministre comidas al trabajador, seran suministradas al costo, pero en ninguna circunstancia podra exceder el cargo que se haga al trabajador de $________ mas el impuesto por tres comidas.

ARTICULO XII
DISCRIMINACION EN EL EMPLEO

El empleador no ejercera discriminacion social o economica en las condiciones del empleo contra trabajador alguno.

ARTICULO XIII
MANTENIMIENTO DE REGISTROS E INFORME DE TRABAJO Y JORNALES

Cada empleador debe llevar exacto y adecuado registro en relacion con las ganancias y horas de empleo de cada trabajador bajo su empleo. Esos registros deben incluir, pero no deben ser limitados a, la informacion indicando el numero de horas trabajadas cada dia, la escala de pagos, la cantidad de trabajo realizado cada dia cuando el trabajo es por piezas o a destajo, y los periodos de tiempo durante los cuales el trabajador tiene derecho a recibir mantenimiento, mas la informacion adicional que pueda ser necesaria para demostrar el cumplimiento de este contrato. El empleador debera mantener la localidad de trabajo y los registros en la forma indicada disponibles para inspeccion por el trabajador o su representativo en cualquier hora prudencial. El empleador debera proveer al trabajador de un informe conteniendo la informacion indicada mas arriba por cada periodo de pago en el momento de pagarle el salario.

ARTICULO XIV
PROTECCION CONTRA INFLUENCIAS ILEGALES E INMORALES

El empleador acepta tomar todas las medidas responsables para mantener a los jugadores profesionales, vendedores de licores intoxicantes y personas envueltas en actividades inmorales e ilegales alejadas del lugar de trabajo.

ARTICULO XV
TERMINACION EN OTRO MOMENTO QUE LA FECHA NORMAL DE VENCIMIENTO

A. El empleador puede terminar el empleo del trabajador bajo el presente contrato en cualquier momento dandole al trabajador por lo menos diez dias de notificacion por escrito y el empleo del trabajador bajo este contrato debera terminar a la expiracion de esta notificacion o a su partida de su area de empleo segun ha sido especificado en este contrato, cual de ellos ocurra primero, sujeto a las disposiciones del Articulo IX de este Contrato. Teniendo en cuenta sin embargo que en el caso de terminacion del contrato por mutuo acuerdo entre el empleador y el trabajador, o por el empleador por razones fuera de su control, el empleador sera responsable de la garantia de trabajo establecida en el Articulo IX de este contrato por un periodo empezando en el dia despues del arribo del trabajador al lugar de empleo y terminado en la fecha de expiracion del contrato. Cuando lo que ocurra es cosa de Dios el empleador puede mediante notificacion al trabajador terminar el contrato inmediatamente o desde la fecha subsiguiente segun especificada en la notificacion y la garantia de empleo del Articulo IX cesara correspondientemente desde la fecha de terminacion del contrato. Por cosa de Dios se entendera cualquier helada, tormenta de granizo, inundacion u otra calamidad natural, otra que sequia, de categoria tal como para hacer imposible el cumplimiento del contrato.

B. Terminación por causa. Si el trabajador es incapaz o está renuente a producir suficiente trabajo para arribar al mínimo por pieza o a destajo señalado generalmente por el Empleador, o si el trabajador rehusa trabajar de una manera apropiada o deja de trabajar en concordancia con lo especulado en éste acuerdo, o si el trabajador ha cometido un acto de mala conducta o indisciplina, o si el trabajador se comprometiese en trabajo en cualquier momento con otra persona que el Empleador, o el agricultor a quién ha sido asignado, o si el trabajador viola alguna ley de los Estados Unidos, el Empleador tiene inmediata potestad para dar por terminado su empleo en cualquier momento. Dejar de reportar a trabajar en tres dias consecutivos de trabajo, será considerado como una renuncia. Cuando el trabajo del trabajador se dá por terminado de acuerdo con éste parrafo (b) las garantías de trabajo previstas en el Artículo IX antes mencionado no serán aplicables y el Empleador no tendrá obligación de pagar por el costo de transporte para su regreso.

ARTICULO XVI
CUMPLIMIENTO DEL CONVENIO

A. Todas las disputas concernientes a la interpretación o aplicación de este convenio deberán ser resueltas exclusivamente por el siguiente procedimiento de queja.

(1) Todas las disputas deberán ser presentadas primeramente al supervisor del trabajador.

(2) Si no se resuelven en discusiones con el supervisor, todas estas disputas serán puestas por escrito aclarando los hechos de la reclamación o disputa y cualquiera solución recomendada y dicha queja por escrito deberá ser entregada a ambos, el representativo designado del Empleador y al representativo del Enlace de Trabajadores Domésticos del Departamento de Comercio de la Florida (Fla. Dept. of Commerce Domestic Worker Liasion Representative) en South Bay, Florida, dentro de los cinco (5) días del hecho que motivó la queja o dentro de los cinco (5) días despues del día de pago en caso de reclamación de salario. Estos representativos deberán reunirse prontamente, deseosos de resolver la disputa. Ellos pueden, por mutuo acuerdo, tener una audiencia o llevar a cabo cualquier otro tipo de investigación que crean apropiado.

(3) Si la queja no se resuelve con el paso 2 anterior y la queja está relacionada con algún asunto cubierto bajo las regulaciones del U.S. Employment Service, que puede estar sujeta a una queja bajo los procedimientos instituidos en 20 CFR Secciones 658.400-423, el afectado deberá registrar su queja con el Employment Service dentro de los catorce (14) días despues de recibir la decisión del Empleador en el Paso 2. Cualquier audiencia disponible como parte del procedimiento de quejas del E.S. deberá ser solicitado por el afectado.

Cualquier queja no presentada por escrito en la manera y tiempo y cualquier queja no introducida a tiempo a través de todos los procedimientos expuestos anteriormente serán por siempre renunciados y excluídos y no se podrán presentar posteriormente en ningun pleito relacionado con este empleo.

B. Cualquier pleito presentado en este contrato o empleo deberá ser presentado en las Cortes Federales o Estatales de la Florida y todas las partes por este medio se someten a la jurisdicción de las Cortes de la Florida para este propósito. En el caso de no seguirse estos procedimientos legales dentro de los treinta (30) días de recibir la decisión final en el procedimiento de quejas en A anterior, todos dichos remedios legales se considerarán renunciados y tal decisión no podrá estar sujeta a futuras reclamaciones. Todas las partes por este medio expresamente renuncian cualquier derecho que puedan tener a instituir cualesquier procedimiento administrativo o a presentar pleito en cualquier Corte fuera de la Florida en cualquier asunto relacionado con este convenio o el empleo de el derivado. Si cualquier trabajador atenta presentar pleito o instituir cualquier proceso compulsorio fuera de la Florida o fuera de las limitaciones de tiempo expuestos anteriormente que requiera del Empleador contratar un abogado para enforzar estas provisiones del convenio, el trabajador por este medio se compromete a pagarle al Empleador el costo razonable de los honorarios del abogado en dicha acción. Es la intención de todas las partes el resolver todas las disputas y reclamaciones bajo este convenio, rapidamente en el lugar del trabajo y que cualquier pleito o quejas sin resolver deberán ser procesadas en las Cortes de la Florida. Este convenio deberá ser interpretado en todos los aspectos de acuerdo con las leyes de la Florida.

Con mi firma a continuacion, yo como el trabajador, certifico que yo soy un ciudadano de los Estados Unidos o un residente legal de los Estados Unidos y que puedo trabajar legalmente en los Estados Unidos.

Firma del trabajador: ______________________

Direccion permanente del trabajador: ______________________

____

Lugar de reclutamiento: ______________________

Area de trabajo: Florida ______________________

Empleador: ______________________

Por (Firma) ______________________

Titulo Oficial: Representante autorizado

ESTE CONTRATO ES SOLAMENTE PARA CORTADORES DE CANA DE AZUCAR (Impreso 1979)

AGREEMENT FOR THE EMPLOYMENT OF UNITED STATES AGRICULTURAL WORKERS

This Agreement made on ________ ________________ between ________________________________, Florida

hereinafter called the employer, and ________________________________, hereinafter called the worker.

WITNESSETH:

ARTICLE I
GENERAL PROVISIONS

During the period from the ________ day of ________________________

to the ________ day of ________________________ the employer agrees to provide agricultural employment to the worker and the worker agrees to perform the work required of him in a good and workmanlike manner and with proper application, care and diligence under the direction and supervision of the employer.

For purposes of this contract a work day consists of 8 hours on any day except Sunday, New Year's Day, July 4, Labor Day, Thanksgiving or Christmas.

ARTICLE II
PREFERENCE

The employer agrees to give to the workers hired under this contract preference in retention of jobs over non-immigrant aliens.

ARTICLE III
LODGING

The employer agrees to furnish the worker upon his arrival at the place of employment and throughout the entire period of employment, without cost to the worker, sanitary facilities and hygienic lodgings which comply with all pertinent local, state and Federal Regulations.

ARTICLE IV
INSURANCE FOR OCCUPATIONAL INJURY OR DISEASE

The employer agrees to provide at no cost to the worker the guarantees with respect to medical care and compensation for personal injury arising out of and in the course of the worker's employment hereunder and for disease contracted in the course of such employment and directly attributable to the work in which the worker is engaged required under the applicable state laws of Florida, and with the requirements of Part 655.202 (b) (2) (ii), Chapter V, Title 20 of the Code of Federal Regulations.

ARTICLE V
PAYMENT OF WAGES

a. The employer agrees to pay wages to the worker at not less than $________ per hour. Where the prevailing rate in the area for the work being performed is higher, the higher rate shall be paid. Piece rates shall be designed to produce hourly earnings at least equivalent to the applicable hourly rates indicated in this Article, and in no event shall the worker be paid less than such hourly rate.

b. The employer agrees to make payment of wages in accordance with prevailing practice in the activities but in no event less often than bi-weekly.

c. If a worker works on Sunday or any of the holidays specified in Article I, he shall be paid for such work at not less than the prevailing rate for similar work performed in the area on such day and in no case less than the rate specified in part a. of this section.

ARTICLE VI
TOOLS AND EQUIPMENT

The employer shall furnish the worker, without cost to such worker, all tools, supplies or equipment required to perform the duties assigned to him under this contract.

ARTICLE VII
DEDUCTIONS

The employer agrees to make no deductions from the worker's wages except in accordance with Part 655.202 (b) (13), Chapter V, Title 20 of the Code of Federal Regulations as follows:

a. Those deductions provided by law.

b. Payment for advances against wages.

c. Payment for articles of consumption produced by the employer which the worker has purchased voluntarily.

d. Value of meals supplied by the employer in accordance with Article XI.

e. Overpayment of wages.

f. Any loss to the employer due to a worker's refusal or negligent failure to return any property furnished to him by the employer, or due to such worker's willful destruction of such property; provided that in no case shall such loss exceed the reasonable value of such property at the time furnished to such worker less normal wear and tear and, in the case of property returned to the employer in damaged condition, its reasonable value at the time furnished less normal wear and tear and less its reasonable value when returned to the employer.

g. Deductions for transportation costs as permitted under Article VIII.

The deductions under b, c, e, and f in each pay period shall not exceed 10 percent of the total amount of wages earned in that pay period: provided that the employer may deduct not in excess of 50 percent of the worker's wages for any pay period for advances to the worker upon the arrival at the place of employment for food and necessary clothing; provided further that at the termination of the work contract, or if the worker abandons his contract, the employer may deduct from such worker's final wage payment any debts which may be due the employer under subparagraphs b, c, e, and f of this Article at the time the contract is abandoned or terminated.

ARTICLE VIII
TRANSPORTATION

Employer will provide or pay for the reasonable cost of transportation and subsistence from the place of recruitment to the place of employment, up to $______________ total, provided the worker completes 50 per cent of the contract period. Advance of subsistence allowance per meal will be limited to ⅓ of the maximum daily board charge as stipulated in Article XI of this agreement. The employer may, however, deduct such transportation and subsistence costs from worker's earnings as provided for in Article VII. Upon completion of 50 per cent of the contract period, the worker shall be entitled to reimbursement of the total cost of transportation and subsistence, or the amount advanced by the employer, whichever is the greater. If the worker completes his contract, the employer will pay the cost of return transportation from the place of employment to the place of recruitment except when the worker is not returning to the place of recruitment and has subsequent employment under which return transportation is paid by his new employer.

All transportation will be by common carrier or other adequate transportation facilities which comply with Interstate Commerce Commission and other applicable regulations. The employer agrees to provide transportation from the worker's on-the-job site living quarters to the fields and return without cost to the worker.

ARTICLE IX
EMPLOYMENT GUARANTEE

The employer guarantees the worker the opportunity for employment for the hourly equivalent of at least ¾ of the work days (as defined in Article I) of the total period during which the work contract and all extensions thereof are in effect, beginning with the day after the worker's arrival at the place of employment and ending on the termination date specified in this contract or its extensions if any.

If the employer affords the worker during such period less employment than required under this provision, the worker shall be paid the amount which he would have earned had he, in fact, worked for the guaranteed hourly equivalent of the number of days. Where wages are paid on a piece rate basis, the worker's average hourly earnings shall be used for the purpose of computing the amount paid under this guarantee.

In determining whether the guarantee of employment has been met, any hours which the worker fails to work during a work day when he is afforded the opportunity to do so by the employer, and all hours of work performed, shall be counted in calculating the days of employment required to meet the satisfaction of this guarantee.

Without prejudice to the employment guarantee for available work for the hourly equivalent of ¾ of the work days during the total contract employment period, the employer will provide sufficient work to enable the worker being willing and able to work, to earn a sum not less than the board charged plus $14.00 during any consecutive period of two weeks each, or pay the worker an allowance of a sum, which added to the sum earned by the worker during such two weeks period, would equal these stipulated minimum earnings.

Witness________________________________

Witness________________________________

ARTICLE X
RIGHT TO PURCHASE AT PLACE OF CHOICE

The worker shall be free to purchase articles for his personal use in places of his own choice, and shall be given an opportunity once each week to go to locations where he can make such purchases. Where the location of employment is not within walking distance of the town offering the desired articles, and public transportation is not available, the employer will make arrangements for transportation.

ARTICLE XI
MEALS

When the employer furnishes meals to the worker, they shall be furnished at cost, but in no event shall the charge to worker exceed $________ plus tax, for three meals.

ARTICLE XII
DISCRIMINATION IN EMPLOYMENT

The employer shall not practice social or economic discrimination in conditions of employment against any worker.

ARTICLE XIII
MAINTENANCE OF RECORDS AND STATEMENT OF WORK AND EARNINGS

Each employer shall keep accurate and adequate records in regard to the earnings and hours of employment of each worker in his employ. Such records shall include, but shall not be limited to, the information showing the number of hours worked each day, the rate of pay, the amount of work performed each day when piece work is performed, and the periods for which the worker is entitled to receive subsistence, and such additional information as may be necessary to demonstrate compliance with this contract. The employer shall make the place of employment and his records as required above available at any reasonable time for inspection by the worker or his representative. The employer shall furnish the worker a statement containing the above listed information for each pay period at the time of wage payment.

ARTICLE XIV
PROTECTION FROM IMMORAL AND ILLEGAL INFLUENCES

The employer agrees to take all responsible steps to keep professional gamblers, vendors of intoxicating liquors and persons engaged in immoral and illegal activities away from the place of employment.

ARTICLE XV
TERMINATION AT OTHER THAN NORMAL EXPIRATION DATE

A. The employer may terminate the worker's employment hereunder at any time by giving to the worker at least ten days' notice in writing and the worker's employment hereunder shall end upon the expiration of such notice, or upon his departure from the area of his employment as specified in this Agreement, whichever shall first occur, subject to the provisions of Article IX of this Agreement. Provided, however, that in the event of a contract termination by mutual agreement between the employer and the worker, or by the employer for reasons beyond his control, the employer shall be responsible for the employment guarantee provided for in Article IX of this Agreement for the period beginning on the day after the worker's arrival at the place of employment and ending on the date of the contract's termination. Where an act of God occurs the employer may by notice to the worker terminate the contract forthwith or as from such subsequent date as shall be specified in the notice and the employment guarantee in Article IX shall cease from the date of termination of the contract accordingly. An act of God shall mean any frost, hail-storm, flood or other natural calamity, other than drought, of such a character as to make further fulfillment of the contract impossible.

B. Termination for Cause. If the worker is unable or unwilling to produce sufficient work to meet the minimum piece rate standard generally applied by the Employer, or if the worker fails or refuses to work in a good and workmanlike manner or fails to work in accordance with the terms of this agreement, or if the worker has committed an act of misconduct or indiscipline, or if the worker engages in work at any time for any other person than the Employer or the farmer to whom he has been assigned, or if the worker violates any law of the United States, the Employer shall be entitled immediately to terminate his employment hereunder. Failure to report for work on three consecutive work days shall be deemed a quit. When the worker's employment is terminated pursuant to this subparagraph, the employment guarantees provided in Article IX above shall not be applicable, and the Employer shall have no obligation to pay return transportation costs.

ARTICLE XVI
CONTRACT ENFORCEMENT

A. All disputes concerning the interpretation or application of this agreement shall be resolved exclusively by the following grievance procedure.

(1) All disputes shall first be presented to the employee's supervisor.

(2) If not resolved in discussions with the supervisor, all such disputes shall be reduced to writing, stating the facts of the claim or dispute and any relief requested, and such written grievance shall be delivered to both Employer's designated representative and to the Florida Department of Commerce Domestic Worker Liaison Representative in South Bay, Florida, within five (5) days of the occurrence complained of, or within five (5) days after pay day in the case of wage claims. These representatives shall meet promptly in an earnest effort to resolve the dispute. They may, by mutual agreement, hold a hearing or make other investigation as they may agree to be appropriate.

(3) If the grievance is not resolved in Step 2 above and if the grievance involves a matter covered by U. S. Employment Service regulations which may be the subject of a complaint under the procedures set forth in 20 CFR Sections 658.400-423, the grievant shall file his complaint with the ES within 14 days after receiving the employer's decision in Step 2. Any hearing available as a part of the ES complaint procedure shall be requested by the grievant.

Any grievance not filed in writing in the manner and time and any grievance not timely advanced through all the procedures specified above shall be forever waived and barred and no later suit may be filed concerning matters related to this employment.

B. Any suit filed on this contract or employment shall be filed in the Federal or State Courts in Florida and all parties hereby submit to personal jurisdiction of the Courts in Florida for this purpose. In the event of failure to pursue such legal remedy within thirty (30) days of receipt of the final decision in the grievance procedure in A above, any such legal remedies shall be deemed waived and such decision shall not be subject to further challenge. All parties hereby expressly waive any rights they may have to institute any administrative proceeding or to file suit in any court outside Florida on any matter related to this contract or the employment thereunder. If any employee attempts to file suit or institute any compulsory process outside Florida or outside the time limitations stated above requiring Employer to employ counsel to enforce these provisions of the contract, the employee hereby agrees to pay Employer's reasonable counsel fees in such action. It is the intent of all parties to resolve all disputes and claims under this contract quickly and at the job site and that any suits on unresolved grievances shall be processed in the courts in Florida. This contract shall be interpreted in all respects pursuant to the laws of Florida.

By my signature below, I as the worker certify that I am either a U. S. citizen or a legal resident of the U. S. and can legally work in the U. S.

Worker's Signature________________________________

Worker's Permanent Address________________________________

____

Place of Recruitment________________________________

Area of Employment: FLORIDA________________________________

Employer________________________________

By (Signature)________________________________

Official Title: Authorized Representative

THIS CONTRACT IS FOR SUGAR CANE CUTTING ONLY

(Printed 1978)
(Over)

FORM A

AGREEMENT FOR THE EMPLOYMENT OF BRITISH WEST INDIANS IN AGRICULTURAL WORK IN THE UNITED STATES OF AMERICA

THIS AGREEMENT made on the ________________________________

between ________________________________ of the FIRST PART

(hereinafter called "the employer") and ________________________________

of the SECOND PART (hereinafter called "the worker"), particulars in respect of whom are specified in Clause I of this Agreement and H.F. EDWARDS, acting for and on behalf of the Governments of Antigua, Barbados, British Honduras, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts, St. Lucia and St. Vincent of the THIRD PART (hereinafter called "the Government's Agent").

WITNESSETH:

WHEREAS, the employer, the Government of ________________________________ (hereinafter called "the Government") and the worker mutually desire that the worker shall be beneficially employed in the United States of America to alleviate the present shortage of agricultural labour;

AND WHEREAS the Government's Agent has been duly authorized to act for the Government [illegible]

NOW THEREFORE, in consideration of the above and of the mutual undertakings hereinafter set forth, the PARTIES HEREBY AGREE, as follows:—

1. PARTICULARS IN RESPECT OF THE WORKER

The particulars in respect of the worker are as follows:—*Place of Recruitment:* For the purposes of this agreement the place of recruitment shall be deemed to be Kingston, Jamaica.

Worker's Contract No. ________________________________

Worker's address in the U.S.A. South Bay, Florida

Place of engagement Housing Facility of Employer

Area of employment Florida

2. SCOPE OF EMPLOYMENT

The Employer will cause the worker to be employed and the worker will serve the employer or the farmer within the area of employment specified in Clause 1 of this Agreement to whom he has been assigned by the employer for the period and upon and subject to the terms and conditions hereinafter mentioned.

3. PERIOD OF EMPLOYMENT

The employment of the worker hereunder shall commence from the date of his arrival at the place of engagement as specified in Clause 1 of this Agreement and shall continue until the worker departs the place of engagement, but in no event later than May 1, 1982

4. OBLIGATIONS OF THE WORKER

(a) The worker will proceed to the place of engagement in the United States of America as specified in Clause I of this Agreement when and as the Government's Agent shall require;

(b) The worker shall work and reside at the place of engagement as aforesaid or at such other place as the employer with the approval of the Government's Agent may require;

(c) The worker shall at all times during the continuance of his employment hereunder, as the employer may from time to time require, diligently and faithfully perform the duties of an agricultural worker or any duties connected therewith or related thereto, under the supervision and direction of the employer, so, however, that the worker shall not be obliged to work for more than eight hours in any period of twenty-four consecutive hours nor on one day in each period of seven consecutive days;

(d) The Worker shall obey and comply with all rules and regulations of the employer which have been approved by the Government's Agent relating to the discipline and the care and maintenance of property;

(e) The worker shall maintain the living quarters furnished to him by the employer in the same condition as to cleanliness as when received by him;

(f) The worker shall not at any time during the continuance of his employment hereunder work for or serve any person other than the employer, or the farmer to whom he has been assigned by the employer;

(g) The worker shall execute such instruments as the Government's Agent may require for the purpose of giving full force and effect to this Agreement.

(h) The worker shall not store in the housing provided him by the Employer articles or containers whose aggregate size is larger than 16,500 cubic inches and so that no one article or container is larger than 8,250 cubic inches.
The employer shall be responsible for the transportation of such luggage in accordance with Clause 5 (l.(i)) hereof.

5. OBLIGATIONS OF THE EMPLOYER

(a) The employer shall provide or pay for the reasonable transportation and subsistence expenses of the worker in respect of the journey from Kingston, Jamaica to the place of engagement as specified in Clause I of this Agreement, provided the worker completes fifty per cent (50%) of the period of employment specified herein; provided, however, that where such transportation and subsistence expenses have been advanced, the employer may in accordance with Clause 6 (b) of this Agreement deduct such advances from the worker's earnings and retain the amount deducted until the worker completes fifty per cent (50%) of the period of employment specified herein, in which event the worker shall be entitled to reimbursement by the employer of the amount so deducted. Nothing in this Clause shall in any way derogate from or result in the worker being placed in a less advantageous position in relation to transportation and subsistence applicable to domestic workers in accordance with prevailing practice in the area of employment.

(b) The employer shall provide from the day prior to the first workday after the day of arrival of the worker at the place of engagement through the day after the last workday prior to the worker's departure from the place of engagement (except as otherwise provided in subclause (a) of Clause 9) the opportunity of doing not less than 75% of full time work (as hereinafter defined) and in default of so providing shall upon the termination of the employment for any cause (other than termination under Clause (10) below) pay to the worker the difference between the amount which the worker would have earned had such opportunity been provided and the total sum of his earnings and subsistence allowances paid to him under Subclause (c) of this Clause. For the purposes of the Clause—
  - (i) "full time work" means work for eight hours per day six days per week at wages prevailing in the area of employment for the type of work in question;
  - (ii) a worker to whom an employer makes work available as aforesaid shall be deemed to be provided with the opportunity of doing full time work for so long as the work is so available notwithstanding that he does not do it by reason of his unavailability, unwillingness or inability to do it;
  - (iii) the wages prevailing in the area of employment shall in the case of work paid for by piece rates (but only in such cases) be deemed to be the actual average earnings of the worker while engaged in work of that type.

(c) The employer shall during the continuance of the worker's employment hereunder, pay the worker in lawful money of the United States of America, at weekly or fortnightly intervals, wages at rates not less than the prevailing hourly rates (i.e. $ 4.69 cents per hour) or the prevailing rates for piece work (as the case may be) paid for similar work under the same conditions and within the particular area of employment;

(d) The employer shall, without prejudice to Subclause (b) of this Clause, from the day prior to the first workday after the day of arrival of the worker at the place of engagement through the day after the last workday prior to the worker's departure from the place of engagement (except as otherwise provided in subclause (a) of Clause 9), sufficient work to enable the worker, being willing and able to work, to earn a sum not less than the sum of $ 86.80 (hereinafter referred to as "the stipulated minimum earnings") in respect of each payroll period of two weeks, or in the event of failure from any cause to provide such sufficient work, the employer shall pay to the worker an allowance of a sum which together with the sum earned by the worker during such payroll period will equal the stipulated minimum earnings; or if the worker has not earned any wages during such period, the employer shall pay to the worker a sum in the amount of the stipulated minimum earnings;

(e) The employer shall, in the event of:
  - (i) the worker commencing his work hereunder during the currency of any payroll period; or
  - (ii) the worker's work terminating during the currency of any payroll period; or
  - (iii) the worker not being able or willing to work for any part of any payroll period, provide sufficient work to enable the worker to earn as a minimum during the part of such payroll period in which he works such sum as bears to the stipulated minimum earnings the same proportion as the part of the payroll period during which he has worked bears to the entire payroll period;

(f) The employer shall provide such living quarters for the worker as are in accordance with the pertinent Federal and State Regulations and such meals for the worker as may be required or approved by the Government Agent, such living quarters to be provided without cost to the worker and if the worker prepares his own meals, he shall be furnished, without cost, cooking utensils and cooking facilities, including fuel; and the cost to the worker of any such meals provided shall not exceed the actual cost to the employer for providing the same or $ 5.00 plus tax , per day, whichever is less;

(g) The employer shall not at anytime during the continuance of the worker's employment hereunder remove the worker from one area of employment to any other area of employment without the prior approval of the United States Employment Service and the Government's Agent;

(h) The employer shall not at anytime during the continuance of the worker's employment hereunder require him to purchase articles or services for consumption or use by him from any source not of his choice;

(j) The employer shall:
  - (i) provide for the worker at no cost to the worker the same guarantees with respect to medical care and compensation for personal injury arising out of and in the course of the worker's employment hereunder and for disease contracted in the course of such employment and directly attributable to the work in which the worker is engaged as may be required or permitted in like cases for domestic agricultural workers under the applicable State Law of the State in which the worker is employed when he receives such personal injury or contracts such disease;
  - (ii) in the absence of applicable State Law providing for payment of compensation to the worker for personal injury received or disease contracted by him as the result of his employment, the employer shall procure insurance satisfactory to the Government's Agent to provide for such compensation.

(k) The employer shall provide a suitable burial for the worker if he dies during the continuance of his employment hereunder or in lieu thereof at the request of the next-of-kin pay the cost involved in the preparation and transportation of the deceased worker to the place of origin;

(l) The employer shall upon the termination of the worker's employment hereunder (otherwise than in any of the events specified in Clause (10) of this Agreement) be obligated as follow:
  - (i) If the worker is repatriated because new and approved employment is not available or special personal or domestic circumstances exist which make repatriation desirable or necessary in the opinion of the Government's Agent, the employer shall pay the cost of reasonable transportation and subsistence expenses of the worker (including the transportation of such luggage as he may be entitled to carry without extra cost under the terms of the Agreement of his transportation) to Kingston, Jamaica;
  - (ii) provide any insurance that the Government's Agent may approve on behalf of the worker in respect of the return journey referred to in Subclause (iii) of this

(iii) shall provide living accommodation and subsistence for the worker from the date of the termination of his employment as aforesaid until such time as the worker can conveniently be transported to the place of embarkation for his return journey to the place of his recruitment;

(iv) use all due diligence and cooperate with the Government's Agent in effecting such transportation, but so that such transportation will not be effected without the knowledge and consent of the Government's Agent;

(m) The employer shall not at anytime during the continuance of the worker's employment hereunder do any act or thing that would tend to subject the worker to living conditions or sanitary or medical services generally inferior to those afforded to other agricultural workers in the same area of employment, or which would subject him to discrimination in employment because of race, creed, colour or national origin;

(n) The employer shall transmit to the Government's Agent a copy of all rules and regulations concerning safety, discipline and the care and maintenance of property;

(o) The employer shall transmit, within fourteen days of the completion of each payroll period, copies of the payroll relating to the worker for such period in such form and to such place as may be approved by the Government's Agent, together with all sums deducted from the worker's wages in accordance with Subclause (a)(i) of Clause 6 of this Agreement and all sums paid directly to the Government's Agent as required by Clause 7 of this Agreement;

(p) The employer shall, as soon as possible after the execution of this Agreement, give security to the satisfaction of the Government's Agent for the performance of the employer's obligation hereunder;

(q) The employer shall in the event of the worker being refused permission to land in the United States of America, provide at the employer's expense transportation for the worker and his baggage back to Kingston, Jamaica and pay the reasonable subsistence expenses of the worker on his journey back to the worker's place of a together with the premiums on insurance that the Government's Agent may approve on behalf of the worker.

6. DEDUCTIONS FROM WORKER'S WAGES

(a) During the continuance of the worker's employment hereunder, the employer shall deduct from the wages due to the worker in respect of each payroll period (which term for the purpose of this paragraph shall include subsistence allowance) the following:-

(i) a sum equivalent to 3% thereof (or such lesser percentage thereof for such period as the Government's Agent may at anytime direct) which sum together with the payrolls the employer shall transmit to the Government's Agent at the British West Indies Central Labour Organisation at Washington, D.C. or at such other place or places as the Government's Agent may direct for the purpose of being applied in accordance with Subclause (a) of Clause 8 of this Agreement;

(ii) the cost of meals provided by the employer for the worker in accordance with Subclause (f) of Clause 5 of this Agreement, at rates not exceeding the rates specified in that subclause.

(b) Where the wage due to the worker in respect of any payroll period exceeds stipulated minimum earnings, the employer may deduct any amount advanced for transportation and subsistence expenses under sub-clause (a) of Clause 5 of this Agreement in the following manner: –

(i) if the wage exceeds the stipulated minimum earnings, but does not exceed $50.00 (United States Currency) by deducting from such excess a sum up to, but not exceeding $14.00 (United States Currency);

(ii) if the wage exceeds $50.00 (United States Currency) by deducting therefrom a sum of $14.00 (United States Currency) plus 25% of the amount by which the wage exceeds $50.00 (United States Currency); provided that if at the termination of the worker's employment hereunder (otherwise than by notice given on his behalf under Subclause (d)(i) of Clause 9 of this Agreement or in any of the events specified in Clause 10 of this Agreement) there shall remain unpaid any balance of the amount advanced by the employer under Subclause (a) of Clause 5 of this Agreement aforesaid, the worker shall not thereafter be required to repay such sum and his liability in respect of the payment thereof shall upon the termination of his employment as aforesaid wholly cease and determine.

(c) Save as herein expressly provided no collections, deductions or rebates from the worker's wage should be made except as required by law.

7. ASSIGNMENT OF WAGES BY WORKER

The worker hereby authorizes and directs the employer after deducting the sums specified in Clause 6 of this Agreement to pay directly to the Government's Agent, from the balance, if any, of the total wages of the worker during each payroll period, a sum equal to 23% of such total wage, and to transmit same together with payrolls to the Government's Agent at such place or places as the Government's Agent may direct, to be applied in accordance with Subclause (b) of Clause 8 of this Agreement; provided, however, the Government's Agent may upon giving reasonable notice to the employer require the employer to discontinue making the aforesaid payments or may require him to increase or decrease such payments by such percentage as the Government's Agent may specify.

8. OBLIGATIONS OF GOVERNMENT'S AGENT

(a) The Government's Agent shall apply every sum remitted to him by the employer in accordance with Subclause (a)(i) of Clause 6 of this Agreement to a fund which he shall utilize for the purpose of defraying:

(i) the premiums on any life or other insurance which he may effect on behalf of the worker in accordance with Subclause (c) of this Clause;

(ii) in his absolute discretion any extraordinary expenses reasonably incurred on behalf of the worker in any emergency.

(b) The Government's Agent shall remit every sum transmitted to him under Clause 7 of this Agreement to the Government to be placed, subject to Subclause (e) of Clause 11 of this Agreement, to the credit of the worker in accordance with the arrangements made between the worker and the Government;

(c) The Government's Agent shall, if it shall appear to him to be expedient to effect any life or other insurance on behalf of the worker, effect such insurance on his behalf.

(d) The Governments' Agent may advance on behalf of the worker the reasonable transportation and subsistence expenses of the worker from the place of recruitment to the place of engagement.

(e) The Government's Agent shall make available at no direct cost to the worker the services of competent attorneys retained by the Government's Agent to act on behalf of any worker who may require such services. The legal services available hereunder shall relate to matters affecting the legal rights of the worker which arise during the course of this contract and except in fee generating cases such legal services shall be provided at the expense of the Government's agent.

9. TERMINATION OF WORKER'S EMPLOYMENT

(a) The employer may terminate the worker's employment hereunder at any time OR the employer may advance the end-of-season termination date of employment specified in Clause 3 by giving the Government's Agent and the worker at least ten days notice in writing provided that any day, after giving such notice of termination on which no work is available through no fault of the employer, shall not be counted and the termination date shall accordingly be extended. This clause shall be construed so that the employment guarantees provided for in subclauses (b) and (d) of Clause 5 do not terminate prior to the end of the ten-day notice unless the worker voluntarily agrees to depart the place of engagement prior to the expiration of the ten-day notice.

(b) In the event of a contract termination by mutual agreement between the employer and the worker or by the employer for reasons beyond his control, the employer shall be responsible for the employment guarantee provided for in Subclause (b) of Clause 5 of this Agreement for the period beginning on the day prior to the first workday after the day of the arrival of the worker at the place of engagement and through the day after the last workday prior to the worker's departure from the place of engagement.

(c) When an Act of God occurs, the employer may by notice to the Government's Agent and to the worker, terminate the contract forthwith or as from such subsequent date as shall be specified in the notice and the employment guarantees in Subclause (b) and (d) of Clause 5 shall cease on the day after the last workday prior to the day of departure of the worker from the place of engagement.

An Act of God shall mean any frost, hail-storm, flood or other natural calamity, other than drought of such a character as to make further fulfillment of the contract impossible .

(d) The Government's Agent may terminate the worker's employment hereunder as follows:–

(i) by giving to the employer on behalf of the worker, at least ten days notice in writing; or

(ii) forthwith upon being satisfied that the worker is by reason of unemployment or under-employment or improper treatment suffering undue hardship.

10. TERMINATION FOR CAUSE

(a) The employer shall be entitled immediately to terminate the worker's employment hereunder and the Government's Agent shall be entitled immediately to cause the worker to be repatriated at the worker's expense in the event:

(i) The worker is found to be or become subject to deportation under the laws of the United States of America, or if the employer or the Government's Agent determines that the worker is unwilling to work in accordance with the terms of this Agreement or determines that the worker has committed an act of misconduct or indiscipline or if the worker engages in work at any time for any person other than the employer, or the farmer to whom he has been assigned, or violates any law of the United States of America; or

(ii) The worker is unable or unwilling to produce sufficient work to meet the minimum production standards generally applicable to the agricultural crop in the area of employment after he has been afforded whatever reasonable trial and training period prevalent in the aforesaid crop and area of employment

(b) When the worker's employment is terminated pursuant to the provisions of Clause 10(a) above, the employment guarantee provided for in subclause (b) of Cl shall not be applicable.

11. EXPENSES COLLECTABLE ON REPATRIATION

(a) Any expenditure incurred by the Government's Agent in repatriating the worker by reason of his employment having been terminated under Clause 10 of this Agreement shall be repaid by the worker to the Government.

(b) Any balance of any amount advanced by the Government's Agent under sub-clause (d) of Clause 8 and which remains unrecovered.

(c) If the worker's employment hereunder shall be terminated by notice given on his behalf under Subclause (d)(i) of Clause 9 of this Agreement or in any of the events specified in Clause 10 of this Agreement, any balance of the amount advanced by the employer for transportation expenses under Subclause (a) of Clause 5 of this Agreement that remains unpaid at the termination of the worker's employment as aforesaid shall be repaid by him to the employer.

(d) In the event of the employer being required to pay to the Immigration Authorities of the United States of America any sum not exceeding $250.00 (United States Currency) by reason of the worker absenting himself without leave from his employment hereunder, the worker shall repay to the employer such sum, not exceeding the sum paid by the employer to the Immigration Authorities as aforesaid, as may be retained under Subclause (e) of this Clause.

(e) For the purpose of securing the recovery of any amount payable by the worker under Subclauses (a), (b), (c), and (d) of this Clause, the Government shall be entitled to set aside (after payment of such allowance to the worker's dependents as the Government may approve) all monies remitted by the Government's Agent under Clause 8(b) of this Agreement until an amount representing the cash equivalent of $250.00 (United States Currency) has been accumulated, and to retain such amount during the period in which the worker is employed in the United States of America and for a period not exceeding six months after the date of his repatriation, and subject to any order of a Court of competent jurisdiction and to any bankruptcy notice under any law relating to bankruptcy, to apply such amount to the payment of any sum not exceeding the cash equivalent of $250.00 (United States Currency) as may be properly payable to the employer or to the Government in respect of any of the matters referred to in Subclauses (a), (b), (c) and (d) of this Clause upon demand being made for payment thereof within the respective periods following, that is to say, in the case of any expenditure or debt referred to in Subclauses (a) and (b) of this Clause within a period of one month from the termination of the worker's employment and in any other case within a period of six months from the date of his repatriation.

Witness ______________________ Worker's Signature ______________________

Witness ______________________ Employer ______________________

By ______________________

Official Title Manager, Labor Division -FFVA

Agent

Witness Government's Agent Signature

Senator SIMPSON. John Etchepare, please.

STATEMENT OF JOHN ETCHEPARE, PRESIDENT, WESTERN RANGE ASSOCIATION

Mr. ETCHEPARE. Thank you, Mr. Chairman, and we appreciate getting another chance to work with you on this testimony.

Senator SIMPSON. Well, I appreciate the depth of background you have in this area, and the subcommittee is happy to receive it.

Mr. ETCHEPARE. I would ask that our written testimony be made a part of the record, and I will just try to restrict my comments to some personal comments with regard to our written testimony.

Senator SIMPSON. Without objection.

Mr. ETCHEPARE. What we had proposed or put in our written testimony are three things that we at the Western Range Association feel would streamline and do the things that the committee is looking for in the H-2 program.

The first of these is the term certification for date certain. What this in essence would do is actually bring the H-2 program as it relates to herders back to where we originally were under the original Acts of Congress that actually started the sheepherder programs back in the fifties, at which time—a sheepherder is not a seasonal employee. It is a different type of a job, and the original program recognized this and granted a 3-year certification with an automatic 1-year extension. We almost had a 4-year contract as such.

Over the years, through regulations and rules through the different Departments this has been cut down to where presently we are now on an 11-month certification. We go through the process for a herder that is here now for 3 years, we have to go through the paperwork process four times.

And as an example, this is a copy of the administration's immigration bill, which is 173 pages long. For one sheepherder for a 3-year period of time, it takes over 200 to 225 pages of Government forms requiring—that is for the four times. It also includes about 30 to 40 individual signatures on those documents.

With date certain, we could bring this back to where we would only take maybe the original 20 forms and could then bring the man in and fulfil our obligations under the rules.

I think one of the questions that you brought up earlier, Senator, and I could address here a little bit is that we do not feel that this would in any way cause a loss of control or monitoring by either Immigration or the Labor Department. With the sheepherders program we are continually, because we have people leaving at the end of the 3-year terms, so many every year, we would continually be in front of the Labor Department requesting certifications, clearances. There would be adverse effect studies continually going on because of our always being in that labor market.

As you know from past testimony, we have a standing open job order 365 days a year that we will employ any herder, domestic herder in the United States that does not have a job. So that at least from the Department of Labor's end of it, it would be a continually yearly update of the program. And so it is our feeling that they would lose no control, no monitoring of the situation, because we would always be there.

But yet, we could eliminate a tremendous amount of man-hours, Department of Labor man-hours and cost to our employers, by eliminating this actual duplication of the same—it is the same man, the same job at the same place, and he is already here. And instead of doing it four times, we could do it once.

With regard to the Immigration and Naturalization Service again, it is the same thing, a constant duplication of the same clearances for Immigration. With the Western Range and with our sheepherder program as it stands now with our agreement, it is handled by one INS office in California.

With regards to these people not leaving, with the Western Range our working agreement with the INS, we have already signed an agreement with INS where we are penalized. We are under a penalty if one of our herders does not timely return to his country of origin.

In other words, if we cannot prove by documentation that this man has left the United States on the date he is to have left, then there is a system in an agreement which has been reached as to how we must, one, cooperate to help locate the man so that he can be found to leave, and two, when that does happen, there is a penalty and a fine that we must pay to defray whatever cost the Government might get into in locating this man and having him leave the country.

It would be my guess that over the 30-some years the western range has operated the figure of people who have not returned, that we have not found, is probably less than one-half of 1 percent, and it may not even be that high.

The other two areas to streamline that we would like is that we are asking that blanket certifications also be granted to the sheepherder program. In most of the other agricultural requests under H-2 they will grant a blanket certification. In other words, they can bring in 1,000, 1,500, 2,000 men under 1 certification.

By regulation or however, the sheepherder program, they have forced us to work—every man we bring, we must go through that process. And we reach times where we may have 15 or 17 or 18 requests for 18 different individuals and this huge pile of paperwork all sitting at the Labor Department on any 1 given day, if it happens to be the day that we have sent in some requests or have people needing herders.

And what we are asking is that the sheepherder portion also be granted that privilege of asking for blanket certification.

And our last is just certification in accordance with the statute, and there all we are asking is that, because of regulations, rules and so forth, we think the original intent of the original H-2 program has somewhat been lost and we would kind of like to see it go back to where it started and let Congress control it.

Thank you.

Senator SIMPSON. Thank you very much. That is very helpful.

[The prepared statement of Mr. Etchepare follows:]

PREPARED STATEMENT OF JOHN ETCHEPARE

I. PREVIOUS TESTIMONY.

On Thursday, October 22, I had the privilege of appearing before this Subcommittee to describe the reactions of the Western Range Association (the "Association") to the immigration proposals submitted by Attorney General William French Smith on behalf of the President.

At that time I described the history of the western range sheep industry and its long-standing and critical need for temporary nonimmigrant aliens to fill the unique position of range sheepherder. I also said that the new immigration law, as proposed, would be tolerable to the Association and the industry if, but only if, significant improvements were made in the H-2 temporary nonimmigrant worker program.

I have returned today not to reiterate my prior testimony, but rather to put before you specific proposals for improvement of the H-2 program. Those proposals are embodied in a draft Bill which is attached to this written testimony.

II. EXPLANATION OF PROPOSED CHANGES.

The draft Bill, which consists of proposed amendments to Sections 1101(a)(15)(H) and 1184(c) of Title 8, United States Code, would make several changes in the present law governing the H-2 program. Each change is badly needed by the range sheep industry.

A. Term Certification for Up to Five Years.

Under the Immigration Act, every H-2 job is a temporary job. The word "temporary" does not describe, or even imply, any specified number of months or years. All that "temporary" means is that the parties, employer and employee, expressly intend that the employee will not remain in the country permanently and that the employment relationship will end at a specified time.

In H-2 agricultural employment, the length of time over which the parties intend the relationship to last varies widely. In certain East Coast farming operations, the employment relationship extends through a harvest season, which may last only a few months. In range sheepherding, the relationship is intended to last for a minimum of three years.

There are several reasons for the longer term of the temporary relationship in range sheepherding. Sheepherding is not a harvest job. Indeed, the unique nature of the job is most prominent not during the busy times of lambing and shearing, but during the long interim periods when the sheepherder is often solely responsible for the safety, health, and growth of his slowly maturing band of sheep. Also, sheepherding is not an occupation which is quickly learned. The Spaniards, Peruvians, and Mexicans whom the Association brings to this country are all carefully screened to make certain that they are experienced and skilled with [illegible] Even so, newly arrived herders must go through an extended period of acclimatization and orientation to American terrain, flora, sheep types, diseases and related problems, and to American methods of herding and feeding sheep on the range.

In recent years, the U.S. Department of Labor, relying on the statutory term "temporary" but interpreting it erroneously to mean "short term," has attempted to reduce the length of the sheepherder employment relationship. In 1978, the Department reduced the labor certification period from one year to 11 months. This meant that four separate and complete certification procedures, requiring substantial paperwork by the Association's staff and by state employment service staffs and resulting expenses, have thereafter been required in order to cover each sheepherder's standard three-year stay. Then, earlier this year, the Department proposed that the length of the sheepherder's employment agreement be effectively limited to 11 months. This proposed change, which the Department has neither acted upon nor finally withdrawn, would have a crushing effect on the Association's members. It would drastically increase paperwork, recruitment, and transportation costs, and it would ensure that the members' sheep will almost constantly be under the care of herders who are still being oriented to American sheepherding.

The Association's draft Bill would reverse the misinterpretations and restrictive practices of the Department of Labor by providing for admission and certification of H-2 workers on a term basis for up to five years. Short-term employment relationships, such as those in the harvest industries, and longer though still temporary relationships, such as those in sheepherding, would all be accommodated. It would not be necessary to recertify each sheepherder every 11 months. Substantial economies would be produced in both the public and private sectors.

We anticipate that the Department of Labor may argue that longer term certification under H-2 should be available only after an employer or an association has demonstrated a need for H-2 workers by having sought short-term certifications for several prior years. At least with regard to sheepherders, such a requirement is patently unnecessary. The nation's need for sheepherders has been demonstrated, year after year, for 30 years.

The Department of Labor's own records reveal this fact.

Term certification is the central aspect of our Association's proposal. We strongly urge this Subcommittee to provide term certification under the H-2 statute.

B. Blanket Certifications to an Association of Employers.

Under existing Department of Labor regulations, the Association is allowed to apply for labor certifications for H-2 sheepherders on behalf of its member-employers. This process has benefitted employer and employee alike, since it has allowed the Association to transfer herders to new employers on those occasions when work becomes unavailable. In addition, the Association has kept an open job order for domestic sheepherder candidates at all state employment services in the Western range area and has made ongoing recruiting efforts (including newspaper advertisements) throughout the same area. The Association has thus been able to serve as a national clearinghouse for the employment of domestic sheepherders, assuring all qualified and available domestic herders that they will have employment.

By stating in the Immigration Act that an association may act as agent for its member-employers, the benefits of present practices can be insulated against the vagaries of the Department of Labor's regulation.

In addition, the Association's draft Bill provides that several H-2 aliens may be covered by one employer (or Association) petition. The Department of Labor has permitted this practice in some industries, but not with regard to sheepherders. Again, by incorporating a sound, economical, and efficient practice into the statute, administrative vagaries will be avoided.

C. Certification in Accordance With the Statute.

Over the years since the enactment of the H-2 program and the permanent immigrant worker programs such as sixth preference, many of the administrative practices of the Department of Labor under the immigrant programs have been incorporated, without statutory authority, into the H-2 program. This has resulted in the imposition of several additional restrictions upon H-2 employers and the H-2 employment contract. The restrictions include prescribed minimum charges for employer-supplied meals, housing inspection requirements often duplicative of the Occupational Safety and Health Act, and the provision by the employer of a multitude of "assurances," including statements that the alien's job is not vacant due to a work stoppage, that the employer will recruit American workers through the state employment services, and that the employer will hire an American worker for the position, even if the alien is already employed, as long as his work contract is less than half completed. These restrictions have no foundation in the H-2 statute.

The Association's draft Bill requires the Department of Labor, if it is the certifying agency consulted by the Attorney General, to certify compliance only with statutory requirements. This change will ensure that the basic structure of the H-2 program is the invention of the Congress and not of the Department of Labor. It will prevent the use of the H-2 program to serve policies which are unrelated to the legislative goals which the H-2 program is intended to meet.

The three changes in the Act which are made by the Association's draft Bill (term certification; blanket certification; certification in accordance with the statute) will make the H-2 program an effective instrument for alleviation of the problems which the Administration's immigration proposals will probably cause.

III. RELATIONSHIP OF THE ASSOCIATION'S PROPOSAL TO OTHER PROPOSALS.

The Association's draft Bill was written with the needs of the Association's members primarily in mind. Despite this fact, the Association's Bill is intended to harmonize with proposals put forth by other agricultural employers and employer groups. Certification for a stated term, blanket and association certifications, and certification in accordance with the statute are goals which the Association shares with every other employer and employer group with which it has had contact.

The Association's draft Bill does not include some proposals of such other groups. This does not mean that the Association does not enthusiastically support those proposals. For example, one such proposal is that certification of the availability of domestic workers be made with regard to the time and place of the proposed employment, and not on a nationwide basis. Because of the Association's open job order and its widespread recruitment, the Association has been able to find and place every qualified and available domestic sheepherder, nationwide. The Association has been able to do so, however, because of the demands of the sheepherder job and the continual need for qualified sheepherders. Accordingly, it has not been an oppressive economic burden to the Association to seek sheepherders all over the country. On the other hand, in seasonal, less demanding occupations, a requirement of nationwide recruitment and transportation would be senselessly costly. Therefore, the Association strongly supports the proposal of certin other employers that the nationwide availablity standard be revised. In so doing, the Association undertakes to continue to employ, through its members, all qualified domestic sheepherders whenever and wherever in the United States they are found.

IV. PROPOSED TITLE IX OF THE ADMINISTRATION BILL.

The Association's program is not a permanent employment program. Nonetheless, we are gravely concerned about the amendments to the sixth and third preference immigrant program which are proposed in Title IX of the Administration's immigration bill, which was submitted to the President of the Senate just two days prior to my last testimony before this Subcommittee.

We are concerned because, as I stated before, the Department of Labor's practices in the administration of the sixth preference program have in the past been incorporated into the H-2 program.

The proposed Title IX would allow the Department of Labor very broad administrative discretion in determining whether, and where, American workers are available. The concept that the American workers must be able, and willing, to perform the job is removed from the statute. The Department will be able to support its decisions with very general labor market information. Finally, the proposal would eliminate all meaningful court review of the Department's actions.

We feel that this Subcommittee should examine the proposed Title IX closely, paying particular regard to the difference between Title IX as it was finally proposed, and the Administration's original stated intentions with regard to existing immigrant employment programs. In Attorney General Smith's testimony before this Subcommittee on July 30, 1981, he stated that the Administration intended to "streamline" those programs and "simplify the procedure for both employers and prospective immigrants." What emerged on October 20 as Title IX was a much tougher, more restrictive program obviously aimed at drastically limiting the opportunities of prospective immigrants and their petitioning employers. It will neither streamline nor simplify the procedure, except insofar as it may discourage employers from using the procedure at all. In short, since July the Administrative appears to have made a total about-face on this issue.

What is being attempted through proposed Title IX with regard to the immigrant worker programs must not be done, either through legislation or administrative fiat, to the H-2 program. Such a result would work extreme hardship on many employers in this country. Among those who would be damaged most would be the members of our Association.

V. CONCLUSION.

The Association urges you to incorporate its draft Bill in the immigration legislation which will be produced by this Subcommittee.

Thank you for your time and attention. I will be glad to answer questions.

Attachment to Testimony of John Etchepare

(November 30, 1981)

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.

Amend 8 U.S.C. § 1101(a)(15)(H) as follows:

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States to perform temporary services or labor for a period not to exceed five years, if unemployed persons capable of performing such service of labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him.

SECTION 2.

Amend 8 U.S.C. § 1184(c) as follows:

(c) The question of importing any alien as a nonimmigrant under section 1101(a)(15)(H) or (L) of this title in any specific case or specific cases shall be determined by the Attorney General, upon petition by the importing employer or his agent, which may be an association of employers, and after consultation with appropriate agencies of the Government to assure that the proposed employment of the alien meets the requirements of section 1101(a)(15)(H) or (L), as the case may be, of this title. Visas for such aliens shall be granted and shall be effective for the duration of the temporary employment of the alien, which shall not exceed five years. Such petition shall be made and approved before the visa is granted. One petition may be filed on behalf of several employers and may cover several aliens. The petition shall otherwise be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

Senator SIMPSON. Mr. Williams, please.

STATEMENT OF RUSSELL L. WILLIAMS, PRESIDENT, AGRICULTURAL PRODUCERS

Mr. RUSSELL WILLIAMS. Thank you, Mr. Chairman.

My name is Russell Williams and I am president of Agricultural Producers, an association whose membership consists of about 80 percent of the citrus and avocado industries of California and Arizona.

We recognize this hearing is intended to receive testimony regarding the current H-2 program and how it might be modified to better address any legitimate temporary labor shortage in this country, as well as protect the domestic labor market. While we will outline our thoughts in this regard, it is our opinion the H-2 program should be viewed as only one component in any revision of the U.S. immigration policy.

We are also of the belief that any effort to revise this country's immigration policy, if it is to have any hope of success, must reduce to the maximum degree possible the necessity for illegal entry as the principal means for aliens to gain access to the United States and its labor market.

We would suggest the greatest obstacle to greater utilization of the H-2 program is inherent in its political and philosophical underpinning, manifested in administrative barriers which, while not posing insurmountable mechanical or operational difficulties, act to frustrate, discourage and thwart an employer's efforts to legitimize his work force through application of this section of the Immigration and Naturalization Act.

Mr. Chairman, it is not our intent to attack or vilify the Departments of Justice or Labor, who we feel are implementing what they perceive to be a congressional directive. Generally, we believe the existing statutory scheme for the administration of the program is sound and should continue.

The Department of Justice, with its overall concern and responsibility for immigration matters, is the appropriate controlling agency. We also believe the utilization of the Department of Labor for the certification process should continue. We do not believe it is appropriate for the State Governors or another Federal agency to be given such authority.

We are of the opinion the administration's proposed guest worker program, allowing 50,000 aliens entry into the United States, simply will not meet the need. Therefore, we recommend that a totally separate and distinct H-2 program be continued. However, the regulations of the H-2 program impose obligations on agricultural employers that differ from those of nonagricultural employers. We believe these obligations and differences serve only to inhibit employer use of the program and not to protect domestic workers and should be eliminated.

Specifically, we suggest a statutory change to provide that domestic workers be available at the time and place of need versus anywhere in the United States, and regulatory changes which would:

One, reduce the number of days during which a job offer must be in the Federal and State employment system;

Two, modify the requirement for housing and board;

Three, discontinue the adverse effect wage rate, as this requirement is an anachronism which in application frequently works to the prejudice of domestic workers;

And four, allow an association to seek certification on behalf of those of its members desiring to participate in the program. We believe this final provision would help rationalize the need for foreign labor.

In conclusion, we are of the opinion the H-2 program, as well as a temporary worker type of program, should be available both to the employer and to the worker. With this, the employer could seek his required work force in a labor market composed of domestic workers and a limited number of foreign workers. Likewise, he could determine to operate under the contractual and regulatory obligations of the H-2 program, with a greater certainty of labor when and where needed.

This dual approach would also allow the worker to make a choice, to enter the free market and offer his services to the employer providing him the best employment terms, with the freedom to move on if he so desires, or he could decide to seek the contractual guarantees of the H-2 program, with the full knowledge he would be assuming certain obligations and also restricting his ability to change employment.

Mr. Chairman, this concludes our testimony. Thank you for this opportunity to present our views.

Senator **Simpson**. Thank you very much.

[The prepared statement of Mr. Williams follows:]

Summary of the Statement of
Russell L. Williams
Agricultural Producers
Before the
Senate Subcommittee on
Immigration and Refugee Policy
Washington, D.C.
November 30, 1981

- The main objective of U.S. policy regarding undocumented entry should be to reduce the size of the illegal component within the total migratory flow by reducing the necessity for illegal entry.
- The H-2 Program should be viewed as only one component in any revision of U.S. immigration policy. Other components would include, Adjustment of Status (Amnesty); Economic Deterents (Sanctions); Employment Eligibility Identification; and a separate and distinct Temporary Worker Program.
- The principal obstacle to greater utilization of the H-2 Program is essentially based with the political and philosophical underpinning of the program and not mechanical or operational difficulties.
- An experimental "Guest Worker" program of 50,000 is numerically insufficient and, when coupled with the other proposals of the Administration, may result in a labor shortfall which necessitates the availability of a viable responsive H-2 Program.
- The administration of the H-2 Program should remain with the Departments of Justice and Labor.
- Specific changes including a shortening of the certification process from 80 to 50 days, the requirement that workers be available at the time and place of need rather than anywhere in the U.S. and the deletion of the Adverse Effect Wage would serve to make the program more responsive and effective.

PREPARED STATEMENT OF RUSSELL L. WILLIAMS

"The U.S. is experiencing the world's largest temporary worker program, larger even than the guest worker programs of Switzerland, France, Holland and Germany. Only ours is unregulated . . . (resulting) in the Immigration Service having to arrest over a million persons annually . . . whose crime is that they want to work in this country."

-Leonel J. Castillo, former Commissioner,
U.S. Immigration and Naturalization Service

INTRODUCTION

Mr. Chairman, my name is Russell L. Williams. I am President of Agricultural Producers, an association of the citrus and avocado industries of California and Arizona. The Association membership consists of approximately 80% of these industries.

The above quotation succintly sets forth the issue before the United States. It is our belief that any effort to reform this country's immigration laws which fails to provide an adequate number of legal-entry opportunities for migrant workers is doomed to failure and makes any such effort a meaningless exercise..

It is our opinion the main objective of U.S. policy regarding undocumented entry should be to reduce the size of the illegal component within the total migratory flow: to transform as many as possible of today's and tomorrow's - undocumented aliens into legal immigrants, whether they are here as permanent settlers or as temporary workers by reducing the necessity for illegal entry through provision of a temporary work program.

We recognize the purpose of this hearing is to receive and discuss the views of the participants as regards the possible amendment of Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (the H-2 Program). However, we are of the belief this matter is being heard and considered as part of a broader discussion involving reform of U.S. Immigration policy. It is in that context and with the firm belief that the H-2 Program may serve as one component of a comprehensive approach involving four additional issues, (e.g. Adjustment of Status (Amnesty); Economic Deterents (Sanctions); Employment Eligibility Identification; and a separate, distinct Temporary Work Program,) that this testimony is offered.

Therefore, this statement will briefly invite your attention to a series of proposals for U.S. Immigration policy reform. It describes the role we believe the H-2 Program might play in such an effort and will offer our thoughts on the modifications to that program which might make it more effective and responsive.

ADJUSTMENT OF STATUS (AMNESTY)

We suggest the creation of three categories of adjusted status: (1) To provide an amnesty eligibility for adjustment to a Permanent Resident Alien Status to those who have demonstated a desire and intent to permanently relocate in the United States and have met certain minimum residency requirements; (2) to allow for an Interim Temporary Resident Alien Status category for those who have arrived more recently or do not meet the amnesty eligibility requirements set forth in (1), yet have demonstrated such an intent and desire; and (3) to make available (while the change from a system of principally undocumented migration to a regulated method of temporary entry occurs) a transitional category for such others as may meet certain specified criteria.

ECONOMIC DETERENTS AND EMPLOYER SANCTIONS

Any such proposal should consider the establishment of a series of graduated penalties related to the severity (frequency and magnitude) of the offense. Such sanctions should begin only after an employer has received an informal, but recorded notice that he is in violation by knowingly hiring an undocumented worker (e.g. warning, civil fine, injunction, revocation and/or denial of certification).

EMPLOYMENT ELIGIBILITY IDENTIFICATION

The imposition of sanctions for the hiring of an individual ineligible for employment in the U.S., without correspondingly providing for a simple, practical and rational system to identify those who are legally employable, places an impossible burden upon the employer.

We suggest a phased program that would lead to a Social Security Card that is, insofar as possible, counterfeit resistant. We suggest beginning with the effective date of any employer sanction statute and until a Social Security verification system is available, that a slight modification of the Reagan Administration's proposal to provide for certain additional specified documents, be accepted as satisfying an employer's "inquiry" obligations.

TEMPORARY WORKER PROGRAM

We recommend a transitional program integrated during its two-year life with a comprehensive adjusted status program. During this first two-year transition, in addition to the adjusted status categories, the Attorney General would be authorized to admit up to an additional 50,000 temporary workers for periods of up to twelve months to ease the dislocation inherent in any change in immigration policy of this magnitude. These workers could seek employment only with designated categories of employers. Employers within these categories desiring to use such labor would be required to register with the State Employment Service. During this period a determination would be made regarding an employer's base labor need, and its then existing composition. This would later be used as one factor in determining the total number of temporary workers allowed entry.

Elements of the Proposed Temporary Worker Program: The program would require an employer certification process. The Attorney General would, in a timely manner, be obligated to "certify" an employer for the utilization of alien labor, if sufficiently able, willing and qualified domestic labor was not available at the time and place needed to perform the work. Normal (not adverse effect) wages and working conditions would be applicable.

Only certified employers could utilize such workers and such workers could seek employment with only certified employers although they would be free to change such employment at will. U.S. Department of Labor and State Employment Services offices would maintain listings of such employers for use by temporary workers in search of employment.

The Attorney General would allow a numerically adequate supply of temporary worker entry. A numerically adequate supply would be determined from the requests from employers seeking "certification". Those numbers would be subject to review by the Attorney General and justification by the employer based on his historical labor requirements - adjusted for changes in business size, etc.

THE H-2 PROGRAM

An Overview

The H-2 Program derives its name from Section 101 (a) (15)(H)(ii) of the Immigration and Nationality Act. This section allows for the Immigration and Naturalization Service and the U.S. Department of Labor (DOL) to permit foreign worker entry into the United States. The program is subject to "public" exposure and scrutiny and is tightly controlled by the DOL and the State Employment Service. It is structured to ensure that employment of foreign workers will not adversely affect the wages and working conditions of domestic workers. The domestic worker and the foreign worker must each receive an individual employment contract.

To initiate the program, an employer submits an application for foreign workers in anticipation of a worker shortage. He is required to recruit domestic workers locally and in any other state(s) the DOL designates. If it continues to appear there will be a shortage of qualified workers and the employer meets all other requirements such as an "acceptable" wage rate, housing, transportation and such, the employer may be authorized to import foreign workers. During the period he employs foreign workers he may anticipate the constant attention of the state and the U.S. Department of Labor. He must accept domestic workers until at least one-half of the work contract is completed, regardless of the number of H-2 workers he may be employing.

The only inherent barrier to broader use of the H-2 Program is that resulting from the political and philosophical orientation of the program - perceived as a Congressional directive and then manifested in an apparently cavalier and whimsical administration of the certification process by the U.S. Department of Labor.

It has been our observation that the United States has historically had a somewhat bifurcated approach to foreign worker programs. One approach is characterized by the H-2 Program, the other by the PL 54 & 78 Programs. As we have noted, the underlying difference lies in the political and philosophical atmosphere which engendered each. The PL 54 & 78 Programs were premised on the point that the Programs were needed and were expected to be used; not crippled or emasculated by bureaucratic red tape. The H-2 Program is embodied in the Immigration & Naturalization Act and is intended as a relief valve to be used only in case of extreme emergency. Congress, through the H-2 provision of the I&NA has, in effect, directed that this program be used infrequently and then only in those cases where all other courses have been thoroughly and completely exhausted.

It is not our intent to attack or velify the Department of Labor or the Department of Justice but rather to convey the perception of many in the southwest - both those currently involved in the program and those dependent upon the undocumented alien.

MODIFICATION OF THE H-2 PROGRAM

Generally, we believe the existing statutory authority for the administration of the program should continue. The Department of Justice with its overall concern and responsibility for immigration matters is the appropriate agency for control of this program. We likewise believe that the utilization of Department of Labor and State Employment Services for the certification process should continue. We do not believe it appropriate for either the States' Governors or another Federal agency - such as the U.S.D.A. - to be given such authority.

We believe the Administration's proposed Guest Worker Program allowing 50,000 aliens entry into the United States during a two year experiment simply will not meet the need. Therefore, we strongly recommend the H-2 Program be continued as a totally separate and distinct program. Additionally, the regulations of the H-2 Program impose obligations on agricultural employers that differ from those required of non-agricultural employers. We believe those differences should be eliminated.

Statutory Changes

Section 101(a)(15)(H)(ii) should be amended to read as follows:

"(ii) who is coming temporarily to the United States to perform temporary services of labor, if unemployed persons capable of performing such service or labor cannot be found in the country at the time and place of need."

Under the Act and regulations written by the U.S. Department of Labor both the Department's Employment Service and agricultural employers have, year after year, engaged in recruiting efforts nearly all of which have failed to produce needed workers. The farther away, both chronologically and geographically, workers are sought the less likely success. The suggested change would not prohibit the Employment Service from searching for workers anywhere in the country, but it would make the H-2 Program more responsive at the time of need and would eliminate these annual exercises in futility. Under non-agricultural regulations "time and place" is defined to mean the Standard Metropolitan Statistical Area (SMSA). For agriculture, it could be defined as being a radius, in miles.

Regulatory Changes

1. Reduce the number of days during which a job order must be in the Federal-State employment system to 30.

The present H-2 regulations (20 CFR Part 655, Subpart C) require that an employer seeking certification must file a job order with the Employment Service sufficiently early to be in the USES's Interstate Clearance System for at least 60 calendar days prior to a date 20 days prior to date of need. The interval should be reduced to 50 days. The USDOL would continue to make a certification decision at least 20 days prior to date of need. The USDOL's computer job bank and the statutory amendment to "at the time and place of need" should enable a meaningful search.

2. The requirement for free housing and a ceiling on board charges should be abolished.

Employers should be free to provide housing at no charge or at cost. Employers should be able to provide meals at cost. The language of the Fair Labor Standards Act and appropriate FLSA regulations should govern.

If housing is not available, an employer should be allowed, during an interim period while housing is being constructed, to provide a housing allowance to workers. No employer should be required to provide housing for workers able to commute between home and job on a daily basis. In no case should there be a requirement to provide family housing.

3. The adverse effect wage rate should be abolished.

There is no such requirement for non-agricultural employers of H-2 workers. Payment to H-2 workers of the Federal or State minimum wage or the prevailing wage rate in the area at that time of employment, whichever is highest, will assure no adverse effect on the wages of U.S. workers similarly employed.

4. Allow agricultural employer associations to be eligible to seek "blanket" certification for its members.

Allowing agricultural employer associations to be eligible for certification for their members would allow workers mobility from employer to employer within the certified association. This would provide an opportunity for longer periods of employment by workers and would probably rationalize the need for such workers. The question of whether the association or its members are the employer would have to be resolved and made a matter of law. We believe such a provision would tend to be self-policing as to individual members in order to maintain the association's certification for all members.

Mr. Chairman, this concludes our statement. Thank you for this opportunity to express our views.

December 2, 1981

Senator Alan K. Simpson
Chairman
Senate Subcommittee on
Immigration and Refugee Policy
A-509 Old Immigration Building
119 O Street, N.E.
Washington, D.C. 20510

Attention: Donna Alvarado

Dear Senator Simpson:

Thank you for granting me the opportunity to appear before the Subcommittee on Immigration and Refugee Policy last Monday on behalf of Agricultural Producers. We greatly appreciated the chance to share with the Subcommittee our thoughts regarding immigration reform, in general, and the H-2 program in particular.

During the question-and-answer period following my statement, you asked me to detail Agricultural Producers' views regarding employment eligibility identification. Recognizing the importance of this difficult issue and feeling that my answer last Monday was somewhat incomplete, I would like to take this opportunity to more fully present our thoughts on the subject.

I have enclosed a brief position paper which we have prepared on this issue and hope that it will prove useful to you and the Subcommittee staff.

Again, thank you for considering our views on these matters. We look forward to working with you in the future as the Subcommittee continues its efforts in this important area of national policy.

Sincerely,

Russell L. Williams

Russell L. Williams
President

RLW:kd
Enclosure

EMPLOYMENT ELIGIBILITY IDENTIFICATION

It is our belief that the imposition of sanctions for the hiring of an individual ineligible for employment in the U.S., without correspondingly providing for a simple, practical and rational system to identify those who are legally employable, places an impossible burden upon the employer.

We are in agreement with those who feel we already have in this country a document that could meet this requirement - the Social Security Card. We suggest the establishment of a phased program that would lead to a Social Security Card that is, insofar as possible, counterfeit resistant. We suggest beginning with the effective date of any legislation providing that it ". . . shall be unlawful for any employer to knowingly employ . . ." and until the Social Security verification system set forth below in Phase Two is available, that the following from the Reagan Administration's proposal, be accepted as satisfying "inquiry" obligations.

A. Phase One

1. Documentation issued by the Immigration and Naturalization Service,
   or any two of the following:
2. Birth certificate
3. Driver's license
4. Social Security card
5. Registration certificate issued by the Selective Service System

During this initial phase we suggest that each applicant for employment also submit a written statement to his perspective employer certifying, under penalty of perjury, that he is a citizen of the United States or an alien authorized to accept employment. Such a statement would be retained by the employer and presented, upon request, to the Attorney General. Under this provision there would be a rebuttable presumption that any employer who secured and retained such a statement was not in violation of the "hiring with knowledge" prohibition. Additionally, such a statement would be admissible in any proceedings against such an employer.

B. Phase Two

Beginning not later than two years after the date of enactment of an "inquiry" requirement, the Attorney General, acting in cooperation with the Department of Labor and the Department of Health and Human Services, would establish a system to verify the validity of the Social Security account or Alien Identification Document number of applicants for employment.

Beginning ninety days after the establishment of such a system and terminating upon the date on which the examination of Social Security cards, etc. is required as set forth in Phase Three each employer in the United States would submit either the Social Security account number or appropriate Alien Identification Document number of each person thereafter applying for employment and would record whether or not the Attorney General has verified the document's validity.

There would be a rebuttable presumption that any employer who submits such an appropriate document number for verification as set forth above would not be in violation of the "hiring with knowledge" prohibition, and evidence of such submission would be admissible in any proceedings against such employer.

C. Phase Three

Not later than five years after the date of enactment of this proposal, the Secretary of Labor and the Attorney General, would issue to all citizens and aliens authorized to accept employment, a Social Security card or Alien Identification Document made with a unique identifier, and these would supplant existing cards/documents.

Beginning not later than six months after the availability of these new documents, each employer, before hiring an applicant for employment, would examine the appropriate document of such applicant and would submit to the Attorney General, information concerning the unique identifier associated with each document, together with the information required to be submitted under Phase Two.

Senator **Simpson**. Now Mr. Rolston, please.

STATEMENT OF KENNETH S. ROLSTON, PRESIDENT, AMERICAN PULPWOOD ASSOCIATION

Mr. **Rolston**. I am Ken Rolston of the American Pulpwood Association, and I would like to bring us from the fields of California and Arizona to the north woods of Maine, up where the spruce and fir are. I am here on behalf of some independent logging contractors in the northern part of Maine who still must employ some Canadian workers to fill out their crews.

Why are Canadians needed in these north woods? In Maine, the forests are in the north and the people are in the south. In the north woods, loggers must either live in camp most of the week or commute long distances daily to their homes.

Second, the work is arduous, although the pay is high. Most of the younger men in central and southern Maine prefer other jobs at less pay closer to home.

And, third, the Canadian population is concentrated on the U.S. border and there are Canadian woodsmen who live closer to the northern Maine woods than U.S. citizens do.

Our industry in Maine is committed to reducing dependence on Canadian woods workers. In 1959 there were 3,400 bonded workers used. In 1972 this was reduced to 1,600, and on through to the current season, 1981–82, only 520 bonded woodsmen were certified for 23 independent logging contractors.

There are about 1,700 logging operations in the State of Maine and less than 2 percent of them employ bonded workers. We have no count on the visas, but guess that there are probably 1,000 to 2,000 visa Canadian woodsmen.

This reduction in bonded woods workers, dramatic reduction from 1959 to the present, has been accompanied by a very dramatic increase in the demand and production of forest products in Maine. We feel that it shows our industry's commitment to mechanize, recruit, and train and to continue to reduce our dependence on Canadian workers.

The Government has largely been very helpful and understanding in this situation, and in particular cooperation between Government, education, and industry. We have two excellent logger training programs in northern Maine that are an example for the entire country in the quality of their graduates.

Streamlining the regulations would be helpful, because these remaining 23 logging contractors are very small businessmen and do have difficulty with the regulations. We have listed in our written statement suggestions on some of the streamlining that we think would be helpful, and we would work with appropriate agencies receptive to reducing the paperwork burden.

We have some opposition. There is a small but vocal group, largely independent logging contractors who are located in southern and central Maine. The organization is the Maine Woodsmen's Association, and these contractors operate in the part of Maine where domestic workers can easily be recruited.

Now, the MWA complains that those independent contractors who employ Canadians in northern Maine reduce their opportunities for profit in southern Maine. But the MWA members will not shift their operations to remote forests of northern Maine. Actually the Maine Woodsmen's Association wants control over the price of pulpwood, and they have tried to do it through strikes and boycotts, unsuccessfully. The Canadian issue is only an attempt to win public sympathy and support.

In summary, I am here to ask that the unique needs of the small businessmen in the north woods of Maine not be completely submerged in consideration of the larger agricultural issue. Logging workers are highly paid. They work nearly year round and high skills are required.

I want to reemphasize our commitment to the reduction and eventual elimination of the use of bonded Canadian woods workers.

Thank you very much.

[The prepared statement of Mr. Rolston follows:]

PREPARED STATEMENT OF KENNETH S. ROLSTON

I'm Ken Rolston, President of the American Pulpwood Association headquartered here in Washington. We're a national trade association representing producers and consumers of pulpwood, the raw material for pulp and paper. Today I will speak for the Association's Northeastern Forest Employers Committee, which is composed of logging contractors and consumer representatives located primarily in northern Maine.

Background

Historically, forest employers in northwestern Maine have been unable to recruit enough native American logging and forestry workers to fully man their crews, and the shortfall has been taken up by Canadian workers. The Canadians so employed are bonded temporary workers certified under the H-2 program, residents with visas, and non-residents with visas.

The eventual goal of forest employers in this north woods area is to be able to rely entirely on native woods workers. Much progress has been made, but there are still considerable social, technical, and economic barriers to overcome. Based on past progress, I am confident that this goal will be reached.

In 1959 about 3,400 bonded woodsworkers were employed. This dropped to about 1,600 in 1972 and to about 800 in 1977. In the 1980-81 hiring season, 29 independent logging contractors employed only 642 bonded woodsmen from Canada. This year (1981-82) the numbers were reduced to 23 independent logging contractors and 520 bonded woodsmen. There are at least 1,700 logging operations in Maine, most of which are small contractors. Less than two percent employ bonded Canadian woodsworkers. Data on Canadians working in the woods with visas today is difficult to come by. We've tried. I've asked our members to guess, and the range is from 1,000 to 2,000.

This dramatic drop in requirements for imported woodsworkers has occurred simultaneously with increasing demand for pulpwood and logs during the last two decades.

Our Interests

Except for the opportunity of "streamlining" the certification process, the administration's recent proposals, if enacted, should have little effect on the bonded woodsworker program. There would be no effect on Canadians with visas. We understand that the major focus of these hearings is on other issues. We are here to be sure our unique situation is not ignored, misplaced, or endangered by default.

We continue to need access to bonded Canadian woodsworkers, although fewer than in the past. We see the end of our need for them in the future, and are working toward that goal. Fewer imported workers are needed today because of logging mechanization and manpower efficiency gains. Thus, reduced manpower requirements make woodswork more attractive. In addition, the industry's excellent efforts to recruit and train natives for woodswork has become more effective. These factors will continue to influence the declining demand for imported labor.

Barriers Remain

The major barrier to full use of native woodsworkers in Maine is geography. Northern and northwestern Maine are forested areas, and the state's population lies almost completely in southern Maine. There are few towns or small settlements with schools and other expected modern amenities in the heavily forested areas. This means forest workers must either live in a logging camp most of the week or daily commute long distances between work and home. Thus, jobs in northern Maine are most unattractive for woodsworkers who live further south. It is impossible today to hire enough Maine men willing to work in the remote forests of northwestern Maine. In a federally funded report on this subject* Professor Robert Bond stated, "Even though the unemployment rate is high, not many of the unemployed are capable or probably desirable of performing timber harvesting work."

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*Bond, Robert S., Bonded Canadian Labor in New England's Logging Industry, Massachusetts Agricultural Experiment Station and USDA Forest Service, 4820-FS-NE-4206-51.6, January 1977.

Although pay is high by any standards, the work is arduous. Most young men who live in the local small communities of the north prefer to work at other jobs for less pay closer to home or to move further south for work in factories, stores, shops, or service occupations.

The bordering area in Canada is a well-populated region. Canadian woodsworkers who live in the many towns and villages of Quebec and New Brunswick close to the U.S border often find working in the U.S. desirable in terms of distance between work and home. These Canadian workers would be farther from their families if they were to work in Canadian woods operations on the north shore of the St. Lawrence River.

Benefits Accrue

These Canadian woodsmen fill an important need for the Maine economy in real terms. Without their employment, pulp mills and saw mills would have to curtail operations with a subsequent loss of mill employment and loss to the government of taxes on production.

The productivity of these northern forests is also an important factor. The woodlands in the North must be operated at their sustained yield potential, and some continued use of Canadian workers will be necessary to sustain this level until domestic labor can be recruited and trained.

Role of Government

For the most part federal and state government has been understanding and helpful on this issue. Most of the students learning logging at two excellent vocational technical schools in northern Maine pay their own tuition, but all are supported to different degrees by public funding, which has been very helpful. Employers have also supported these schools by purchasing logging equipment and furnishing woods camp housing and forest tracts for the practical teaching portion of the courses.

Employers of temporary logging workers under the H-2 program have suffered under the complex paperwork and regulatory system imposed, and this process could be streamlined.

The current 23 employers of bonded woodsworkers are very small businessmen by any standards, and they frequently have problems understanding and fully complying with H-2 regulations.

An examination of the bonded woodsworker program should reveal areas of regulation which could be streamlined without adverse effect on anyone. Here are some examples:

1. Streamlining the process of developing prevailing wages.
2. Simplification of the application process.
3. Simplification of equipment rental reimbursement rates to reduce inflationary aspects.
4. Evaluation of the appeal process to be certain that adequate time for challenge is permitted.
5. Reduction in the recruiting period from 60 to 30 days.
6. Increases in meal charges to reflect inflation.

The Opposition

The Northeastern Forest Employers Committee (NFEC) of the American Pulpwood Association is opposed by the Maine Woodsmens Association (MWA). The members of both organizations are small independent logging contractors who employ woodsworkers. Our NFEC members are primarily located in northern Maine, and most must continue to fill gaps in their crews with Canadians. MWA members are primarily located in central and southern Maine where native woodsworkers can be recruited. They view the NFEC as competitors. The MWA is vocal in opposition to employment of Canadians in Maine, claiming that their members' opportunities for profit are adversely affected.

The point of law which applies is whether employment of aliens adversely affects the earnings and working conditions of U.S. citizens, not whether some employers' opportunities for profit could be enhanced by forcing competitors to operate shorthanded. On this consideration the claims of the Maine Woodsmens Association fail to show merit.

The true goal of the MWA is to gain control over the price of pulpwood. It has tried to do so, without success, through strikes, boycotts, and the National Labor Relations Board. The MWA wants the best of both worlds: the freedom to be independent businessmen and the collective bargaining power granted bona fide employees represented by a union. The Canadian worker issue raised by MWA is without merit in law or regulation, and is an effort to gain media attention and sympathy and support of elected officials.

The application process for bonds gives Maine workers full opportunity to apply for these jobs. The jobs are advertised in Maine's larger newspapers, and since 1980 job pool interviews have been held through the Maine Job Service in appropriate Maine localities, such as Presque Isle, Houlton, Skowhegan, and Rumford. Thus, if an individual is interested in a job, he can attend the job mart and speak directly to the logging contractors. Logging contractors would much prefer to employ Maine woodsmen if they could get them, rather than go through the hassle of applying for bonded Canadian workers. Sufficient numbers of Maine woodsmen simply will not work for extended periods of time in Maine's remote forest locations.

Final Word

The Northeastern Forest Employers Committee urges that its members' unique needs for supplementary Canadian workers be considered under its own set of circumstances. Woodsworkers are highly paid, skill requirements are high, and employment is full time. There is no real comparison to be made with the requirements for seasonal agricultural harvest workers. We are certainly not looking for an increase in Canadian woodsworker employment. Our history shows a commitment to reduce reliance on Canadians. We ask for no special privilege, only for understanding of our worthy and legitimate needs.

November 30, 1981
Kenneth S. Ralston
President
American Pulpwood Association
1619 Massachusetts Ave. N.W.
Washington, DC 20036

Senator SIMPSON. Thank you very much. That is very helpful. You do certainly have a unique situation there.

Mr. Hart, I might ask, you have indicated that the H-2 provision should be amended to refer to U.S. workers being unavailable "at the time and place of need." Let me ask you—I hate hypothetical questions, that is why I will ask this—let us say that under such a new standard an unemployed person in a nearby State might be very interested in picking citrus for a particular grower but he does not know about the job because no effort has been made to recruit U.S. workers outside of the local area. The result would be then that the U.S. worker would remain unemployed and a foreign worker may well have taken that U.S. job.

That does not seem too appropriate to me nor in our best national interest. For example, I would assume that the U.S. worker might be receiving various Government benefits. And I would appreciate your comments on that scenario.

Mr. HART. Well, Mr. Chairman, I would have to agree with the scenario as you described it. I do not think we are looking for a tight definition of the word "local." I think we need to address it in terms of an area or a radius around the job category. The U.S. Employment Service, through its job bank facilities, does have the full knowledge of the job orders that had been placed, and those are circulated through the system. So any American workers who are interested in any given job category have access to that information.

What we are recommending is not requiring an east coast job order to be circulated through the west coast or through the Texas area, because of the distances involved. To say that the recruiting has to be confined to just the State of Florida or just the county within which the job originates, I do not agree that that is the way to focus on it either.

Senator SIMPSON. You state, too, that one reason for an expanded H-2 program is that agricultural employers fear that the legalization program will result in many newly legalized farmworkers moving into other job sectors. Do you really feel then that it is inevitable that this country will have a permanent—if a rotating class but a permanent—class of foreign workers in agriculture doing jobs which U.S. workers will not do and permanent residents will not do, because they would decline to take those jobs at prevailing rates? Is that where we are?

Mr. HART. I think we have to be realistic in our assessment of the fact that there are certain jobs in America that Americans do not want to do. That is not only confined to the agricultural sector. The access of employers to the illegal labor source currently fills most of those jobs. Once the availability of illegal workers is regulated. I think employers will have to revert to temporary foreign workers if U.S. workers continue to be uninterested in coming into agriculture from any other sector.

Senator SIMPSON. Well, that is going to be one that we will be pursuing. I think that is the frustration of the issue, or one of the frustrations, is that I think it is always going to be that case that there will be this indeed a permanent class of foreign workers in agriculture.

Well, Mr. Sorn, you have testified that your association agrees with the principle that H-2 workers should not be less costly than U.S. workers. But you also state that the cost per H-2 worker is already much greater than the cost per U.S. worker. And in your written testimony you have provided us with figures. Then later in your testimony you advocate abolishing certain of those requirements, such as housing and the ceiling on board charges and so on.

And another witness, who will testify later in the morning, in his written testimony has advocated the abolition of nearly all of those requirements.

The question then, I guess, is, Would the H-2 workers be more costly even under your review if these various expenses were not present? How is that for a whizzer?

Mr. SORN. It is quite a whizzer.

Senator SIMPSON. This is just a curious thing that comes to me.

Mr. SORN. I agree with the theory that the H-2 worker should not be cheaper to use. We have several issues here right now, for instance, in Florida. And I agree that as an H-2 employer we should be required to do whatever the prevailing practice is in the area. If the prevailing practice is to advance transportation, then that is what we should be required to do in order to obtain H-2 workers. If the prevailing practice is to provide free rent, then that is what we should do, too.

Now, I am not advocating this for the Nation, because I think it would vary from area to area. But if, for instance, it is not the prevailing practice to provide this round-trip transportation, then I do not think it should be required on our H-2 workers either.

Where there is not a predominance of H-2 workers in the local labor market, the adverse-effect wage, I think, should be whatever the prevailing rate is in that area.

But I would advocate in an industry such as sugar cane in Florida, the one I represent, where the H-2 workers do predominate, then it is difficult to determine what would be the prevailing wages, for instance, for an American worker. In that particular case, the adverse-effect wage should be above the minimum wage as dictated by the Fair Labor Standards Act.

It is difficult—and I am not trying to run around your question, Mr. Chairman—but it is difficult to just carte blanche say what I would recommend or not recommend. We agree with the theory that it should not be cheaper to use the H-2 workers.

Senator SIMPSON. But, in essence, that there should be no special requirement for H-2 that would not be required of a U.S. migrant?

Mr. SORN. That is correct, except where there is a predominance of the interested workers in a particular area. Then I think there should be.

Senator SIMPSON. You state also that curtailment of the bracero program and more restrictive H-2 regulations in the 1960's caused a great increase in illegal immigration since that time. And as you know, many persons and many witnesses before this subcommittee in these months have argued that these programs in themselves contributed toward illegal immigration by establishing the networks or the contacts or the appetite or however you would want to state that. Do you have any comment on that?

Mr. **Sorn**. I think, Mr. Chairman—and maybe Florida is different than other States because up until 1965 we did not use the bracero program in the State of Florida—our experience is strictly with the H-2 program and West Indies labor. Up until 1965 we had no major use of illegal aliens in the State of Florida in agriculture. I do not know about the other industries.

It was because of the curtailment and the reduction in the use of the H-2 program, the squeeze that was put on us, that the Florida farmers found workers, including illegal workers, in the State of Florida.

What you said about the network was not there in Florida because we just did not use the bracero program. And I really cannot talk for California or the individuals that used the bracero program. I know we did not use illegal workers in the State of Florida in agriculture until the squeeze was put on us in the H-2 program.

Senator **Simpson**. Well, certainly, it is interesting to me in the hearings, whenever we discuss temporary workers or guest workers, then someone within a very short time will interchange the word "bracero" and that, as I stated many times, was an offensive program to me. And I had personally observed it. And yet it is a continual reference as we bring it back in the discussions on temporary workers or guest workers. It is a very interesting and unfortunate reference, in my mind.

One other question. You have stated that farm wages have risen in Florida even though Florida has a significant number of H-2 workers. And I would ask you have those wages risen in the agricultural sector and geographical areas where the H-2 are actually employed?

Mr. **Sorn**. Mr. Chairman, we do not have any official figures to prove what we say. But I have been in Florida for 28 years and we are going to contract, we hope, with an economist to come down and see if we can prove what I am about to say.

We feel—and this is the growers in the area, in the Glades area; bear in mind that these 8,500 to 8,700 H-2 workers just cut sugar cane and it is all within a 25-mile radius of a little place called Belle Glade, which also has an extensive amount of other agriculture. It is a major labor market, the major labor market area in the State of Florida.

We have felt, and the growers feel, that the adverse-effect provision on wages and the benefits through the criteria regulations and through negotiations, the annual negotiations with the representatives of the workers from the West Indies, have contributed greatly to wages and benefits that are greater in the Glades area than they are in other parts of the State.

We have the feeling that the further away you get from the concentration of H-2 workers the less the wage rates and the less the perquisites that are available to workers. It is just the opposite effect from what people say.

Senator **Simpson**. I want to relieve you and tell you that you certainly are not the first witness in or out of Government that has ever presented unproved figures. [Laughter.]

Mr. **Sorn**. Maybe next year at this time we can prove it.

Senator SIMPSON. And I would appreciate, if you are doing that, your sharing that information with us as soon as you have it available.

Mr. SORN. It will be at least 6 to 9 months before that is available.

Senator SIMPSON. I would appreciate that.

Mr. Etchepare, first of all, how do you think one might be assured of the continued employment of H-2 workers in a particular industry if one is using a term of up to 5 years, as you suggest? What is the certainty there?

Mr. ETCHEPARE. The certainty that the employee will remain with the job? I am not sure of the question, sir.

Senator SIMPSON. Well, others have suggested a 5-year certification. Things can change in that period, many things can change in the period between 1 and 5 years on certification. Do you think that there would be a great certainty if we were just going to go and use this term of up to 5 years, as you suggest, that it is going to solve a lot of problems?

Mr. ETCHEPARE. It will solve the problem at least as it relates to the sheepherding end of it. I can speak directly to that, because that is where I am involved. In that just even within my own operation it will give more certainty to it. A sheepherder is a skilled worker. And part of that skill, he can bring with him from the country of origin, but a large portion of that skill he has to learn here because of terrain, temperatures, weather, the type of sheep, the herding philosophy of the employer he is working for.

So you are almost into probably, in all fairness, into almost the second year before that man is really to where you are really beginning to benefit from his services. The employee himself, the boys generally that we work with that come under our program are here strictly for one purpose. They come from a country—most of these fellows are fairly highly educated, and they are here strictly to build a base to go home and either buy farms, help their family buy farming properties.

The boys we have all come from agricultural backgrounds; they all have sheepherding experience before they get here. And their goal is to earn the funds to go back into these things. And so their interest is to stay within a reasonable length of time to earn enough funds to accomplish what they want. And this seems to be, this 4- to 5-year period, seems to fit their needs better than the shorter 3-year period.

It is my feeling that both the employer and the employee as it relates to sheepherding will benefit. And as I say, this was originally how the original program was established years ago; it was actually a 4-year program, 3-year certification, with an almost automatic 1-year extension that could be granted.

Senator SIMPSON. What do you think of the administration's proposal of having the State rather than the employer initiating, that they are then the certifying agency? Do you think that is a good proposal, having the State do it rather than the employer? In other words, the administration proposal is that the Governor of the State will say, "These are the areas that are certified; and these are not," and so on.

Mr. **Etchepare**. In my personal belief, it should remain with the employer and not with the State.

Senator **Simpson**. What do you think the number of persons might be admitted under the H-2 program considering the economic needs of your industry?

Mr. **Etchepare**. Presently—and it has stayed pretty consistent over the last 8 to 10 years—it is approximately a turnover of about 300 people a year, which puts us up a little over 1,000, or approximately 1,000 people in, totally in the country, at any one given time.

But there is a turnover for the 3-year period of about 300 people, and I do not see that changing. The only way I can see that changing is if we cannot get the price of a lamb a little above 46 cents. Now, that might cause us some problems.

Senator **Simpson**. Well, that is interesting. Some things occur in an industry where you have a price of lamb at 46 cents and then a leg of lamb is $30 in the market. It seems like you have some middleman factors or brokers or whatever. But that is an interesting thing in itself.

Mr. **Etchepare**. It is; and I would like to talk to you about it sometime, Senator. [Laughter.]

Senator **Simpson**. Yes; that is the subject of another issue.

But let me ask a final question. Do you think a guest worker program would be helpful in addition to an H-2 program?

Mr. **Etchepare**. I think we need both programs. I think it will be filling two different needs. I do not feel as it relates just to agriculture and pertaining even more specifically to the sheepherder program, I do not think we will see any benefit with the guest worker program as it relates to sheepherders.

But I think that as it relates to the total immigration problem that you are looking at with our problems with Mexico with our borders, I think there is a definite need for it. And I think that some of the proposals can be controlled and will benefit both.

Senator **Simpson**. From your experience and long time with the Western Range group and Western agriculture, do we perceive many more illegal aliens in actual livestock ranching operations than ever before?

Mr. **Etchepare**. I would say over the last 5 to 10 years there has been a steady increase in those numbers.

Senator **Simpson**. I thank you very much.

Now, Mr. Williams, how many temporary migrants do you think we should begin with in our first efforts under a guest worker program?

Mr. **Williams**. You are talking about an administration type of proposal, I assume?

Senator **Simpson**. Yes. How many do you think we might initiate the program with on guest workers? The administration has suggested 50,000. Do you have any thoughts on that?

Mr. **Williams**. Well, if that is going to be the sole program available to an employer currently relying upon undocumented aliens, then it is going to have to be substantially higher than that. It is difficult to come up with an exact number. I can kind of lead you through mental gymnastics I go through occasionally when someone asks me a specific question regarding what our need in California might be.

The State statistics indicate there are probably between 400,000 and 500,000 workers at peak in agriculture in California. Now, for the purpose of just discussion or argument, if you assume that 25 percent of those are undocumented, which I think would be an extremely conservative figure, then you would be talking in the neighborhood of 100,000 workers in California agriculture at peak.

If you then extrapolate and follow the estimates that the Attorney General utilized in his testimony, saying there is something like 15 percent are in agriculture, and let us just be very optimistic and say that in California that is not the situation, that half are in agriculture, then you are talking about a total need in California alone of 200,000 workers.

So then if you go nationwide beyond that, you would begin to get some sort of an idea of the impact. I am not sure that my statistics are accurate, but it is the kind of a question that has gone through my mind, too. The 50,000 would not do it.

Senator SIMPSON. You know, as I say, the administration has proposed that the State under the guest worker program would be a certifying agency. Do you think the employer should be that, or the State?

Mr. WILLIAMS. We think, as we indicated in our testimony, that the certifying agency should be with the U.S. Department of Labor and not at the State level. The employer should seek certification but not through the States' Governors but through the Department of Labor.

Senator SIMPSON. Let me ask you a final question. Could you elaborate, please, on the phase-in process that you envision for social security card as a means of identification and that employer sanctions program?

Mr. WILLIAMS. Our thoughts regarding this parallel the thoughts of many in the Congress with regard to this system. My thoughts would basically be to suggest a short transitional period, phasing into a more secure social security card, over a 2- to 3-year span, with a new card developed that is more counterfeit resistant.

We see the Reagan proposals as something that would be perhaps adequate during an interim period, and then a transitional phase requiring verification over maybe that period until—or longer or shorter—until a counterfeit-proof or counterfeit-resistant social security card would be available.

Senator SIMPSON. Maybe you heard that rather long question—well, it was not a long question, but it was a curious one, for me, because I wonder about it, where I stated that we have illegal foreign workers in many cases concentrated in the harvest of only certain crops. Legal we have a totally legal work force in, say, lettuce and table grapes by the same employer. And in the field, as I say, next to that raisins and olives with an entirely illegal work force. Do you have any insight into why that is?

Mr. WILLIAMS. Well, I can only, of course, respond based upon my perception and my knowledge. But that would not be my perception. I think that it might vary from employer to employer and crop by crop. But I do not think that necessarily any crop, with certain exceptions, would be totally free of undocumented workers.

I am not terribly familiar with the vegetable industry other than just by peripheral knowledge. But my understanding is that they have a problem similar to the rest of the agricultural industry in California with regard to undocumented aliens.

Senator SIMPSON. Mr. Rolston, just a couple of questions. In your testimony you state that in 1959 about 3,400 H-2 workers, woods workers, were employed and that this year only 520.

Mr. ROLSTON. Yes, sir.

Senator SIMPSON. Has that number of domestic woods workers also been declining? And what are those figures on the domestic?

Mr. ROLSTON. I am sorry I do not have that data. Instinctively, I am sure that it has been increasing, the domestic workers have been, because the production rate has increased dramatically in northern Maine during that period of time.

Senator SIMPSON. Do you have any information on the amount of wages paid to H-2 workers as compared to that paid to U.S. workers?

Mr. ROLSTON. No.

Senator SIMPSON. Do you think you could gather that information without going to a lot of hoorah?

Mr. ROLSTON. We will try and submit it.

[The information furnished follows:]

SUPPLEMENTAL SUBMISSION

Data on Piece Rates Paid to H-2 and U.S. Workers

The following piece rate information for nine logging contractors may shed some light on the piece rate situation in the unorganized townships of Northwestern Maine where the shortage of U.S. woodsworkers makes it necessary to employ H-2 workers. The piece rates shown in the columns headed "Piece Rate Offered" were offered to both H-2 and U.S. workers. The sources of the data are the Maine Sunday Telegram of May 3 and 10, 1981 and the Bangor Daily News of May 9 and 11, 1981. The piece rates shown in the columns headed "Prevailing Piece Rates" are the published prevailing rates effective May 1, 1981 in Maine and are the result of the wage survey made by the Bureau of Employment Security of the Maine Department of Manpower Affairs.

Rates paid now (December, 1981) would, of course, be somewhat higher in many instances.

Logging Contractor James Martin
(Operations located in T16R6, T11R10, and T14R8

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut and Skid Treelength Pulpwood	$ 9.00/cd.	$ 9.15/cd.
Cut and Skid Softwood Sawlogs	23.65/mbf	23.65/mbf
Cut and Skid Hardwood Sawlogs	22.50/mbf	25.50/mbf

Logging Contractor Pelletier and Pelletier
(Operations located in T9R10 and T9R11)

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut and Skid Treelength Pulpwood	$ 9.58/cd.	$ 9.15/cd.
Cut and Skid Mixed Sawlog Species	24.42/mbf	19.55 to 26.55/mbf

Logging Contractor Maibec Logging Inc.
(Operations located in T14R15)

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut and Skid Mixed Sawlog Species	$20.00 to $29.00/mbf	$19.55 to $26.55/mbf

Logging Contractor Wilfred Theriault
(Operations located in T10R4, T11R3, T13R5, T10R6, and T14R5)

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut and Skid Treelength Pulpwood	$ 9.15/cd.	$ 9.15/cd.
Cut, Skid, Buck, and Pile Four Foot Pulpwood	11.00/cd.	11.00/cd.
Cut, Skid, Buck, and Bunch Eight Foot Pulpwood	9.00/cd.	9.00/cd.
Cut and Skid Treelength Hardwood	7.50/cd.	7.50/cd.
Cut and Skid Mixed Sawlog Species	20.00/mbf	19.55 to 26.55/mbf

Logging Contractor H. P. Vaillancourt, Inc.
(Operations located in Caswell, Hamlin, and Van Buren township)

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut and Skid Treelength Pulpwood	$ 8.20/cd.	$ 9.15/cd.
Cut, Skid, and Buck Four Foot Pulpwood	11.20/cd.	11.00/cd.
Cut and Skid Mixed Sawlog Species	20.00/mbf	19.55 to 26.55/mbf

Logging Contractor Paradis Pulp and Logging
(Operation in T13R7)

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut and Skid Tree Length Pulpwood	$ 9.65/cd.	$ 9.15/cd.

Logging Contractor Big Brook Logging
(Operation in Ashland township)

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut and Skid Treelength Pulpwood	$ 8.90/cd.	$ 9.15/cd.

Logging Contractor Herve Blanchet
(Operation in T14R15)

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut and Skid Treelength Pulpwood	$ 9.15/cd.	$ 9.15/cd.
Cut and Skid Mixed Sawlog Species	20.00 to 21.00/mbf	19.55 to 26.55/mbf

Logging Contractor Corriveau Logging
(Operations in Parkertown, Adamstown, and Upper and Lower Cupsuptic townships)

Occupation	Piece Rate Offered	Prevailing Piece Rate
Cut, Skid, Buck, and Pile Four Foot Softwood Pulpwood	$10.00/cd.	$10.00/cd.
Cut, Skid, Buck Four Foot Hardwood Pulpwood	8.70/cd.	8.75/cd.
Cut and Skid Mixed Sawlog Species	24.50/mbf	19.50 to 26.55/mbf

Conclusions - Pulpwood piece rates offered to all workers are generally lower or the same as the prevailing rates published for H-2 workers. In two instances the offered pulpwood rate was higher, but I suspect an error in my interpretation is more likely the cause. Sawlog piece rates are often expressed in ranges. The correlation is weak and could only be improved by on site inspections of actual conditions.

In reality, the development of more reliable data on comparative pay scales between H-2 and U.S. workers in northwestern Maine could only be through on site visits to logging jobs. On those job where both H-2 and U.S. workers are employed, and this is the usual situation, piece rates would be the same both for similar products cut and for similar forest conditions. It is obvious that neither Canadian or U.S. workers would accept less pay than the other nationality worker for the same type of work.

It is probably worthwhile to note that the prevailing wage set for any logging season (May 1 to April 30) is of necessity based on past rates paid and has a tendency to set a "floor" for future rates for all workers.

Ken Rolston
President
American Pulpwood Association

Mr. **Rolston**. The State of Maine holds quite an extensive annual survey of wages which they base this on, and we can provide you with that information.

Senator **Simpson**. You do state that without Canadian woodsmen, that the pulpmills and sawmills in your area of the country would have to curtail operations. Has any effort been made to raise wages and improve the safety to attract U.S. workers from southern Maine to take the jobs now held by the H-2 workers? And if you could, describe those efforts.

And I know that you make a significant training effort. I think that is very interesting, but I am also fascinated by I guess it is the geography of Maine, where those who live in southern Maine just do not care to come to northern Maine to do that and there are only small population groupings up there in that area.

Mr. **Rolston**. Well, it is a little more complex than that. If you go back in the history of logging, you have to go back to the small family farm. Every youngster that was raised on that small family farm picked up logging skills as a natural course and was available to log. Well, it is not that way anymore.

So the skill requirements are high. You have to start somewhere. And you just cannot walk right out of the small community and go on up into northern Maine and start work. It would be very hazardous for you to start working in logging, and productivity would be very poor.

Senator **Simpson**. Well, I thank you.

I guess there was one other question, and I will just take a couple of minutes. That phrase, "adversely affect the wages and working conditions of workers in the United States who are similarly employed, 'I have always found that standard to be a bit puzzling.

It seems to me that it could be argued that a so-called shortage of U.S. workers in certain occupations under "prevailing wages and working conditions" would be eliminated if these conditions were made more favorable, and that if instead foreign workers are brought in, then the adverse effect would have indeed occurred; namely, that a potential improvement in wages and working conditions would have been prevented.

How is that for an early grabber? Do you have any comment on that, any one of you?

Mr. **Sorn**. Mr. Chairman, if I could lead it off, I think we have heard that many times, and that would only come into being if there were not other factors that would change also.

Let me give you an example in the sugar industry. If the H-2 workers were not available, the sugar industry would not be as viable as it is now and have the jobs available for all of the rest of the American workers. If you brought in 100—or let us say that you were going to curtail the certification of H-2 workers, then the employers would have a choice. They need not necessarily continue to grow that crop. So your proposition would only be true if all of the other factors affecting that particular grower and that operation in that area would not change.

But in my proposition, I would say that they would change, and they could end up in a total less demand for workers and less wages.

Senator **Simpson**. Do you have any comment on that, very briefly?

Mr. **Hart**. I would say that in general the harvesting of a crop produces three to four jobs from the fringe area of the productivity. So that if the worker is not available to pick the crop, the trickle-down process and the economic impact obviously is directly affected. And the mere fact that the apple is picked and the cane is cut or the trees are harvested, you would cut off that whole chain if the worker was not available initially to do the job. Many U.S. workers would be adversely affected if the initial job function is not preformed.

Senator **Simpson**. Any comment?

Mr. **Etchepare**. The only comment I would make, at least with Western range and the sheepherders, the adverse effect would actually be an inflationary item in the herding area, because the domestic sheepherders in Wyoming and Utah and Idaho could be hired at a lower rate, much lower rate, than the H-2, and yet the H-2 in the survey, the H-2's wages are included in that survey.

So the effect we have seen with it has just been an inflation thing; it makes sure that the herder wages stay well ahead of the inflation rate.

Mr. **Rolston**. I guess we are in a little different position, because we are doing our best to work our way out of this whole process. And so it seems to me that the wage rate is attracting domestic workers, and somewhere down the road we will not come testify at one of these hearings.

Senator **Simpson**. Yes, I can see that with the figures you present to us.

I thank you very much, all of you. You have been very helpful.

Next we have the legal advocates panel on H-2: Steven Karalekas of Charles, Karalekas, Bacas & McCahill; Margaret McCain of the Farmworker Unit of Pine Tree Legal Assistance. Inc.; Rob Williams of Florida Rural Legal Services, Inc.; and H. Michael Semler, executive director of the Migrant Legal Action, Inc.

And if you would, please proceed in that order of agenda, with recognition of the 5-minute limitation. Mr. Karalekas.

STATEMENT OF S. STEVEN KARALEKAS; CHARLES, KARALEKAS, BACAS & McCAHILL

Mr. **Karalekas**. Thank you very much, Mr. Chairman. I apologize for the condition of my voice this morning, but I think I have a Thanksgiving cold. I will try to speak as loudly and as clearly as I can.

Senator **Simpson**. It was not from shouting at the referees during the Redskins game, was it? [Laughter.]

Mr. **Karalekas**. No, it was not.

I am here to testify this morning about the H-2 program as viewed from a law office as opposed to the farm. I think you have heard ample testimony about the problems faced by agricultural employers in the United States. The problems I see with the H-2 program are legal problems which I think Congress can address and solve.

I will summarize my statement by making three general observations about the H-2 program and then three specific recommendations which I hope the subcommittee will take into consideration.

Preliminarily, I would like to say that our law firm provides legal advice and assistance to agricultural employers who bring in approximately 5,000 H-2 workers per year.

Basically, we represent the east coast apple growers which have formed an organization known as the Farm Labor Executive Committee; the Virginia-Carolina Agricultural Producers Association; the Presidio Valley, Texas Association; and other, smaller agricultural groups around the country.

I would also like to point out that I have had personal experience with the H-2 program from three different perspectives over the past 11 years. In the early 1970's I was involved with the H-2 program as a member of the White House staff.

Subsequently, I had involvements as an administrative assistant to a Congressman from Massachusetts who had H-2 farmers in his district.

And third, I have worked on a daily basis with the H-2 program as a lawyer for the growers I have just mentioned.

With respect to the three preliminary observations, I would like to make: First my strong view is that the H-2 program should be continued because threre is a labor shortage in American agriculture today. We have heard that from the testimony of the prior witnesses. The Reagan administration has come out in favor of continuing the program, as has the Select Commission on Immigration and Refugee Policy.

The shortage is shown by the fact that the Department of Labor over approximately the past 20 years has certified its existence, however reluctantly.

Finally, we point to the fact that there are countless thousands of illegal, undocumented workers on American farms, filling jobs that, if they are removed, would have to be filled by someone else.

The second observation is that the illegal alien problem in this country will not be solved by Congress or anybody else unless there is a practical alternative for agricultural employers to secure labor. We believe that the practical alternative is the H-2 program. But in order for it to remedy the shortfall in labor, it must be changed.

The third observation is that the H-2 program must be streamlined and expanded. At the present time it is virtually impossible for a small farmer to follow the necessary paperwork steps to bring in H-2 workers without hiring an attorney or joining an association that has legal representation.

In other words, a farmer does not have access to the program by himself. The reason basically is that the H-2 program, as currently structured by the Labor Department, is complex and cumbersome. It is really beyond the capability of the average citizen to fathom from beginning to end.

Moreover, the Department of Labor has been very hostile to the H-2 program and, as a consequence, employers who would consider getting into the program have run into terrible resistance over the years.

Last, the H-2 program as currently structured is a tremendous burden on the Immigration Service and on the State Department.

Unless these paperwork problems are solved the H-2 program it is not going to work on an expanded scale.

As far as our recommendations are concerned, we believe that, No. 1, the program has too much paper. We have outlined and attached to our statement all of the paperwork requirements one must deal with at the Labor Department, the Immigration Service, and the State Department. Our recommendation is that there be one document for the employer to file to be used throughout the whole system. Ultimately when that document comes out of the system, the employer should be ready to bring in his workers.

The second recommendation is that the time period for the whole process to work ought to be shortened to 30 days, that is, 30 days from the time the employer files his request and the time he receives permission to bring the workers into the United States.

The final recommendation is that all discriminatory requirements in this program be eliminated so that H-2 workers be treated no differently in terms of wages, working conditions, and benefits than anybody else.

Thank you very much, Mr. Chairman.

Senator SIMPSON. Thank you very much. That is very helpful.

[The prepared statement of Mr. Karalekas follows:]

PREPARED STATEMENT OF S. STEVEN KARALEKAS

MR. CHAIRMAN:

I appreciate the opportunity to present my views on the H-2 temporary worker program to the Subcommittee on Immigration and Refugee Policy. While our law firm serves as legal counsel to a number of agricultural and non-agricultural employers participating in the program, my remarks today will focus on its legal aspects--the view from the law office rather than the farm.

As a lawyer, I have had the opportunity to work with the H-2 program from three different perspectives: from 1971 to 1973, I first became involved with the H-2 program as a member of the President's White House staff; from 1973 to 1974, my involvement became more extensive as an administrative assistant to a Member of Congress from Massachusetts who had H-2 apple growers in his district; and for the past eight years, I have worked with the H-2 program on a daily basis as a private attorney. With this executive and legislative branch and private sector experience, I believe I can present positive suggestions to the Subcommittee which, if implemented, will benefit all who are a part of the H-2 program.

I should point out to the Subcommittee that our law firm currently represents approximately 350 East Coast apple growers who have associated themselves in an organization known as the Farm Labor Executive Committee (FLEC). We also represent the Virginia-Carolina Agricultural Producers Association, an organization of tobacco farmers in Southside, Virginia; the Presidio Valley Farmers Association, Presidio, Texas, an organization of vegetable and melon growers; and most recently, AAA Forestry Services, Inc., the largest reforestation company in the United States. Our firm has also been consulted on legal matters relating to the H-2 program by the National Council of Agricultural Employers, the International Apple Institute, the American

Farm Bureau Federation, the Rockefeller Foundation, and a host of academicians and legal scholars.

While the views presented in this paper are those of a Washington attorney, they reflect the position of our clients and should be considered in that light.

THE H-2 PROGRAM SHOULD BE PRESERVED, STREAMLINED, AND EXPANDED.

It is my considered opinion that the Congress will not be able to solve the illegal alien problem unless it provides a simple, efficient, and practical alternative for labor-starved agricultural employers. Other witnesses today have presented the grim statistical picture facing American farmers. The fact of the matter is that they are short of help. The presence of large numbers of illegal aliens on U.S. farms is simply the result of insufficient numbers of U.S. workers ready, willing, and available to do farm work. If Congress takes steps to impose employer sanctions on U.S. farmers for knowingly hiring illegal aliens, those sanctions will not work unless there is somewhere the farmers can turn for needed workers. The H-2 program should be that alternative. However, unless it is streamlined and expanded, it remains an impractical one.

The Mexican guestworker program proposed by President Reagan is not the answer. The 50,000 Mexican workers to be admitted annually cannot even meet the labor needs of farmers in the state of California, much less the rest of the United States. And this presumes that the 50,000 guestworkers will all elect to work in agriculture. Surely they will not. What is needed, in the final analysis, is an H-2 program that works. The recommendations set forth below are designed to achieve this objective.

The H-2 Program Should Be Streamlined. In order for the program to work on a national scale, the H-2 program must be greatly streamlined. At the present time, it is impossible for a small farmer to apply for a labor certification from the Labor

Department, process his paperwork through the Immigration and Naturalization Service and the State Department, and bring workers to the farm without employing the services of an attorney and/or becoming a part of an association which is represented by an attorney. This is ridiculous! There are thousands of small farmers who cannot afford the administrative and legal costs of the H-2 program, and countless others who do not have a labor-oriented farmers' association available to them.

The H-2 Program Should Be Tailored to the Needs of the Individual Employer. If a farmer anticipates the need for supplemental foreign labor, he should be able to handle the entire process himself. At the present time, this is out of the realm of possibility. The H-2 system is complex and cumbersome. The Labor Department is so hostile to the program that small farmers are usually discouraged from applying or led into paperwork traps that render them ineligible for labor certification. Two recent examples serve to highlight the problem.

In 1978, the Presidio Valley Farmers Association sought certification for the admission of 800 Mexican workers to harvest their melon and onion crops. The growers filed their paperwork in January of 1978 in reliance on the advice of the Texas Employment Commission and the Dallas Regional Office of the U.S. Department of Labor. Their paperwork was rejected and returned to the growers twelve times over a five-month period. Each time the growers amended their paperwork in accordance with the instructions of the two government agencies and re-filed it. By May 15, 1978, fifteen days after the onion harvest was due to begin, the Presidio growers were still negotiating with the Labor Department about additional paperwork requirements. The Department continued to frustrate their efforts, notwithstanding the fact that fifty thousand dollars worth of onions were rotting in the fields each day due to an acute labor shortage. The growers finally had to seek relief from the U.S. District Court for the Western District of Texas.

Another, more egregious example of Labor Department malfeasance occurred the same year. A small tomato grower from Smithfield, Kentucky decided to rid himself of the illegal alien habit by filling his harvest labor needs with H-2s. The grower filed a labor certification application for 30 workers. He was stunned by the reaction from the Labor Department. The Department ordered the Kentucky Employment Service to do everything in its power to thwart the certification application. The grower was eventually referred 30 uninterested, unqualified workers to harvest his crop and his labor certification application was denied. When his tomato harvest began, the workers disappeared. Left with no other alternative, the grower was again forced to use illegal aliens. Someone in the Labor Department apparently alerted INS authorities of this fact and his farm was raided midway through the harvest season. The grower was indicted and subsequently convicted for harboring illegal aliens--a federal crime. In the process, he suffered the almost total loss of his crop. Apparently the strain was so great that he died suddenly of a heart attack shortly thereafter.

These examples are reflective of the relentless opposition farmers encounter from the very government agency most responsible for the operation of the H-2 program.

Too Much Paper. The H-2 program is adrift on a sea of paperwork. The documents an applicant must deal with in order to bring temporary foreign workers into the United States are listed below and attached to this statement for the Subcommittee's review.

At Department of Labor:

1. Labor certification application (Attachment 1).
2. Job order complying with the requirements of 20 C.F.R., Parts 653 and 655 (Attachment 2).
3. DOL Approval Notice (Attachment 3).

At the Immigration and Naturalization Service:

1. INS form 129-B, Petition to Classify Nonimmigrant as Temporary Worker or Trainee (Attachment 4).
2. INS form I-320B, Bond Agreement (Attachment 5).
3. Notice of Approval of Nonimmigrant Visa Petition (Attachment 6).

At the Department of State:

1. Visa Application Form (Attachment 7).
2. I-94 (Attachment 8).

This paperwork is required whether a grower seeks one worker or 200. Even if a farmer is ambitious enough to do the paperwork himself, there are so many pitfalls, traps, and ambiguities, that he faces the likelihood of repeated rejections and repeated refilings. This exercise occurs frequently, even to those organizations represented by attorneys experienced with the H-2 program. We strongly recommend that Congress mandate a one-step application process. There should be only one application form which, if approved, could be used by the three federal agencies to discharge their responsibilities under the Immigration and Nationality Act. Simplifying the paperwork will make the program more accessible to a greater number of farmers and will greatly lessen the load on the Departments of Labor, State and Justice.

Shorten the Time Period. At the present time, the application process takes much too long. Typically, an employer commences the process by filing his paperwork with the Labor Department approximately 90 - 100 days before the date he needs the workers at the farm. While the Department imposes an 80-day lead time, growers usually file 90 - 100 days beforehand to allow time to amend or modify the paperwork if it is rejected.

Under its regulations, 20 C.F.R. §655.206, the Labor Department cannot issue certification approval notices more than 20 days before the date of need. This allows a maximum of 20 days for the employer to proceed through the next several steps to bring his workers in.*/ He must next file a petition with the Immigration and Naturalization Service District Office. His petition, the I-129B, must be accompanied by duplicate copies of the certification approval notice and a bond document. After INS approves the petition, the grower must then file for a visa application with the consular office in the country of origin of the workers. In the case of Jamaica, this last step is not required because of U.S./Jamaica treaty arrangements. The INS approval notice is communicated to the port of entry which issues the I-94 Border Crossing card to the Jamaican workers.

It is virtually impossible for farmers to move the federal establishment fast enough to accomplish these steps in the 20-day period. In the first place, requiring the Immigration and Naturalization Service district offices to act almost immediately on an H-2 petition imposes a tremendous burden. In many places, such as the Washington, D.C. district office, the growers must literally overwhelm the district director with phone calls, letters, telegrams, etc., to get their petitions to the top of the action pile. Oftentimes growers must seek the assistance of their Senators and Congressmen. This creates havoc at the district office, is unfair to other petitioners, and generates pervasive ill-will. However, if a grower simply mails his application in, he has no hope of securing INS approval within the 20-day period. In fact, in the Washington district office, it takes approximately three weeks for the mail room just to establish a file for a petition.

Even if the grower is able to get a quick turnaround at the INS district office, he must still cope with the Department of State. In the case of farmers using Mexicans, a visa application must be filed at the U.S. Embassy in Mexico City or one of the outlying Consular offices. In a recent letter received from the Mexican Embassy (Attachment 9) the Virginia tobacco growers were advised that at least 30 days are required for processing visa applications for large groups of Mexican workers! After the final piece of government paper has been received--the I-94--the farmer still must transport his workers to the farm and provide several days of training.

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*/ More often than not, the applicant loses three to five days waiting for the certification approval notice to reach him through the mail.

A small farmer has little hope of accomplishing the foregoing within the 20-day timetable. If extraordinary measures were not taken by growers currently using the system, the workers would not have arrived at the worksite until long after the harvest had begun. The resulting crop losses would be incalculable.

Congress should remedy this situation by imposing a 30-day requirement on federal agencies administering the H-2 system. That is thirty days from the time the employer files his application and the time the application is approved, by all agencies. The Departments of Labor, State and Justice would, if faced with such a mandate, necessarily reduce the paperwork requirements and processing time.

To further simplify things, Congress should provide for a multi-year certification approval for employers demonstrating a perennial labor shortage. Under this system, an employer would file a labor certification application each year for three years. If the Department certified a worker shortfall in the first two years, the Department would issue a certification approval in the third year, good for a period of three years. This would drastically reduce the paperwork burdens on everyone concerned.

The H-2 Program is Too Expensive. The third major factor precluding participation or large numbers of farmers in the H-2 program is its cost. In addition to the legal, administrative and time costs described above, H-2 farmers face a panoply of expensive requirements not imposed upon any other employers. Among the more onerous requirements are:

(a) An artificially established wage rate well above the federal minimum wage (adverse effect wage rate);

(b) Free housing;

(c) Free transportation;

(d) Subsidized meals;

(e) Three-quarter wage guarantee;

(f) Recruitment costs, including positive recruitment.

(See 20 C.F.R. Part 655).

Congress ought to eliminate these requirements. It is the ultimate in unfairness for farmers unable to find ready, willing, and able U.S. workers to harvest their crops, to be penalized by the imposition of needlessly expensive wages and benefits. This is a glaring disincentive for farmers to use the program.

Illustrative of the cost of the H-2 program is the cost of recruitment. This is because employers seeking temporary foreign workers must recruit U.S. workers wherever they may be found in the country. It is patently unfair to require a small farmer, who may need several harvest workers for 30 or 40 days to have to conduct recruitment activities in all fifty states. This problem could easily be corrected by adding a requirement to the H-2 provision in the Immigration and Nationality Act (Section 101(a)(H)(ii)), to allow the admission of H-2's where domestic workers are unavailable at the time and at the place of need.

Congress should eliminate the economic discrimination of the program by mandating that employers using H-2's not be required to provide wages and benefits of employment different from those required under applicable federal, state and local employment laws.

Finally, I wish to call the Subcommittee's attention to the fact that the H-2 program has been a legal battleground. Employers of H-2's have been the favorite target of the Migrant

Legal Action Program represented by the attorneys sitting beside me at this table today. Migrant Legal Action Program, through its local affiliates, has filed major class action lawsuits against growers to disrupt the certification process and ultimately destroy the program. Many of the suits are brought over such issues as the wage rates, fringe benefits, and working conditions. One such example is the case of Rios v. Marshall Civil Action No. 5711 (1979) pending in the U.S. District Court for the Southern District of New York. In that suit, Migrant Legal Action attorneys have sued the following parties: the Secretary of Labor, the Attorney General, the Commissioner of INS, various New York State officials, the Florida Secretary of Labor and Employment Security, the Secretary of Labor of the Commonwealth of Puerto Rico, 13 individual apple growers, 3 apple grower associations, 3 officials of apple grower associations, the British West Indies Employers Association, Florida Fruit and Vegetable Association, Florida Sugar Producers Association, the Government of Jamaica, the Caribbean Regional Labour Board, the British West Indies Central Labour Organization, and 4 other individuals. The allegations range from antitrust violations to grower discrimination against various categories of unidentified workers.

While the Congress obviously is limited in its ability to dissuade legal action attorneys from bringing these suits, we believe streamlining and simplifying of the program will reduce the areas susceptible to such costly and burdensome litigation.

It has been a privilege to testify for the Subcommittee today. Our law firm stands ready to work with your staff to provide any guidance, assistance, or data required to complete your important task.

Thank you for your attention.

S. Steven Karalekas

ATTACHMENT 1

OMB Approval No. 44-R1301

U.S. DEPARTMENT O BOR
Employment and Training Administration

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THIS FORM

PRINT legibly in ink or use a typewriter. If you need more space to answer questions on this form, use a separate sheet. Identify each answer with the number of the corresponding question. SIGN AND DATE each sheet in original signature.

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by $10,000 fine or 5 years in the penitentiary, or both (18 U.S.C. 1001).

PART A. OFFER OF EMPLOYMENT

1. Name of Alien *(Family name in capital letter, First, Middle, Maiden)*

2. Present Address of Alien *(Number, Street, City and Town, State ZIP Code or Province, Country)*

3. Type of Visa *(If in U.S.)*

The following information is submitted as evidence of an offer of employment.

4. Name of Employer *(Full name of organization)*

5. Telephone *(Area Code and Number)* 1-

6. Address *(Number, Street, City or Town, Country, State, ZIP Code)*

7. Address Where Alien Will Work *(If different from item 6)*

8. Nature of Employer's Business Activity	9. Name of Job Title	10. Total Hours Per Week a. Basic	10. b. Overtime	11. Work Schedule (Hourly)	12. Rate of Pay a. Basic	12. b. Overtime
Reforestation	Tree-Planter	40		7:00 a.m. 4:00 p.m.	$13.50 per 1000— trees	$ per hour

13. Describe Fully the Job to be Performed *(Duties)*

Tree planting involves the planting of pine seedlings according to employer/supervisor instructions, using handtools consisting of a hodad, a pick-like mattock. 500 to 1000 seedlings will be carried by the worker in a planting bag similar to a rucksack backpack which will weigh approximately 40 lbs. when full. All tools will be provided by the employer. One set of tools will be issued to each planter. Tools will be returned to the supervisor at the end of each workday. The cost of tools lost or damaged by the planter will be deducted from the planter's wages. Trees contained in bags or bundles will be issued to the planter by the supervisor. Bundles or bags will be considered to contain 1000 seedlings. Each worker will be credited with the production he/she achieves. Each partial bag must be kept tightly closed and in the shade. Each worker (See Attachment)

14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in Item 13 above. None

EDUCATION (Enter number of years)	Grade School	High School	College	College Degree Required *(specify)* Major Field of Study
TRAINING	No. Yrs.	No. Mos.		Type of Training
EXPERIENCE	Job Offered Number Yrs. Mos.	Related Occupation Number Yrs. Mos.		Related Occupation *(specify)*

15. Other Special Requirements

16. Occupational Title of Person Who Will Be Alien's Immediate Supervisor ➤ Field Supervisors

17. Number of Employees Alien will Supervise ➤ 0

ENDORSEMENTS *(Make no entry in section - for government use only)*

Date Forms Received	
L.O.	S.O.
R.O.	N.O.
Ind. Code	Occ. Code
Occ. Title	

Replaces MA 7-50A, B and C (Apr. 1970 edition) which is obsolete.

ETA 750 (Oct. 1979)

18. COMPLETE ITEMS ONLY IF JOB IS TEMPORARY			19. IF JOB IS UNIONIZED *(Complete)*	
a. No. of Openings To Be Filled By Aliens Under Job Offer	b. Exact Dates You Expect To Employ Alien		a. Number of Local	b. Name of Local N/A
	From	To		c. City and State N/A
25	3/1/82	4/7/82		

20. STATEMENT FOR LIVE-AT-WORK JOB OFFERS *(Complete for Private Household Job ONLY)*

a. Description of Residence		b. No. Persons Residing at Place of Employment				c. Will free board and private room not shared with anyone be provided?	
("X" one)	Number of Rooms	Adults		Children	Ages		("X" one)
☐ House			BOYS				☐ YES ☐ NO
☐ Apartment			GIRLS				

21. DESCRIBE EFFORTS TO RECRUIT U.S. WORKERS AND THE RESULTS. *(Specify Sources of Recruitment by Name)*

Advertising in newspapers of general circulation; use of U.S. Employment Service system; word-of-mouth. Efforts have failed to produce needed workers.

22. Applications require various types of documentation. Please read PART II of the instructions to assure that appropriate supporting documentation is included with your application.

23. EMPLOYER CERTIFICATIONS

By virtue of my signature below, I HEREBY CERTIFY the following conditions of employment.

a. I have enough funds available to pay the wage or salary offered the alien.

b. The wage offered equals or exceeds the prevailing wage and I guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.

c. The wage offered is not based on commissions, bonuses, or other incentives, unless I guarantee a wage paid on a weekly, bi-weekly or monthly basis.

d. I will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States.

e. The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship.

f. The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage.

(2) At issue in a labor dispute involving a work stoppage.

g. The job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law.

h. The job opportunity has been and is clearly open to any qualified U.S. worker.

24. DECLARATIONS

DECLARATION OF EMPLOYER ➤ *Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.*

SIGNATURE

DATE

NAME *(Type or Print)*

TITLE

AUTHORIZATION OF AGENT OF EMPLOYER ➤ *I HEREBY DESIGNATE the agent below to represent me for the purposes of labor certification and I TAKE FULL RESPONSIBILITY for accuracy of any representations made by my agent.*

SIGNATURE OF EMPLOYER

DATE

NAME OF AGENT *(Type or Print)*

ADDRESS OF AGENT *(Number, Street, City, State, ZIP Code)*

APPLICATION FOR ALIEN EMPLOYMENT CERTIFICATION (Continued)

13. Describe Fully the Job to be Performed (Duties) (Continued)

will be required to keep the trees in the planting bag wet at all times. Generally no more than 1 tree is to be removed from the planting bag until the planting hole is properly prepared. The planting hole shall be completely broken out on three sides and dug to a depth capable of accommodating the tree's root system in a natural arrangement. Planters will be expected to work in weather ranging down to 30°. Planters will provide their own rain gear, jacket, hat, and boots and will be expected to work in light rain. Planters will be expected to maintain a production level of 2000 trees a day after a reasonable training period.

ATTACHMENT 2

STATE OF MARYLAND
DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES
EMPLOYMENT SECURITY ADMINISTRATION

CLEARANCE ORDER

RURAL MANPOWER JOB OFFER

U.S. DEPARTMENT OF LABOR - MANPOWER ADMINISTRATION

1. Industry Code: 0175

RECEIVED

2. ESARS Order Number:

3. Occupational Title and Code: FARMWORKER, FRUIT (Agric.) II 403.687-010 -

4. Employer's Name and Address (Number, Street, City, State, and ZIP Code):

5. Period of Employment From 4/01/80 [illegible] To 6/6/80

6. Clearance Order Issue Date: -

Job Offer Expiration Date: 6/6/80

7. Crew Leader's Name and Address: WILL NOT ACCEPT REFERRALS OF CREWLEADERS CURRENTLY ACTING IN VIOLATION OF FARM LABOR CONTRACTORS REGISTRATION ACT. Crewleader must furnish complete roster of crew members and be responsible for items in Attachments 1, 3, 5 and 7.

Social Security Number:

Home Phone:

Leader's Functions	YES	NO
Supervises	☒	☐
Transports	☐	☐
Pays	☐	☐
Assumes OASI	☐	☐

Negotiable

8. Wage Rates, Special Pay Information and Deductions: Workers paid at the rate of $3.10 per hour. Current Adverse Effect Rate or Prevaling Wage Rate, if higher, guaranteed in all cases. See Attachments 2 and 3 and Work Agreement.

9. No. Normal Hours of Work
Per Day 8
Per Week 48
Normal work days (circle): S [✓ M T W T F S]

10. No. & Type of Workers Needed
Total Number 30
No. Individual 30
No. Family none
No. Group

11. Job Specifications: Primary work functions will be pruning of fruit trees and cultivating of ground around fruit trees, etc., all connected with the production of fruit. It is expected that 80% of the time will be spent in pruning of fruit trees and the balance of the time spent in cultivation of fruit trees and related items. These percentages are predicated on seasonal fluctuations, such as temperature and other weather conditions. See Attachment #4 for job descriptions, work conditions, and physical demands. The attached Work Agreement also provides more detailed descriptions of job and responsibilities.

12. Location of Job: Hancock, Maryland area, see attached ES-338 forms for location of labor camp.

13. Board Arrangements: Arrangements for meals will be the responsibility of the worker or crewleader. If furnished by grower see Attachment 5 & Work Agreement

14. Location and Description of Housing: Free housing is furnished to individual willing and qualified workers requesting and needing same for the period of employment. See Attachment #5 and Forms ES-338.

Number and Capacity of Housing Units

Barracks	Family Units	Single Rooms
1-80	none	none

Housing meets Federal or higher State standards and is approved for occupancy by the following number of persons: 80

15. Referral Instructions: SEE NO. 7 ABOVE. Coordinated from Applicant Holding Office to the Employer. See Attachments 1 and 5 for complete details.

16. Collect Calls Accepted	YES	NO
By Employer	☒	☐
By Order Holding Office	☒	☐

17. Transportation Arrangements: Grower agrees to reimburse the reasonable in-bound transportation expenses of the worker from place of recruitment only after worker has completed 14 consecutive days from the commencement of his employment or 50% of contract period, chever is shorter. See Attachment #6 for more plete details.

18. Distribution of Clearance Order:

19. Address of Order Holding Office:
P. O. Box 1099, Hagerstown, Md. 21740
or
401 E. Antietam St., Hagerstown, Md. 21740

20. EMPLOYER - CERTIFICATION: This Job Offer describes the terms and conditions of employment offered by me.

Signature

Title

Name of Agency Representative

Telephone

Replaces Form ES 560A which is obsolete.

Date Signed and Submitted to Order Holding Office January 7, 1980

MA 7-90
Aug. 1973

Employer:______________________________ ESARS Order Number:________________

Occupational Title & Code: 403.687.010 Farmworker, Fruit (AGRIC.) II Date:____________

ATTACHMENT NUMBER 1
(page 1 of 2 pages)

ITEM #7, CREW LEADER'S NAME AND ADDRESS (AND OTHER REQUIREMENTS)

If crewleader applies under this job order, he must have valid and current Registration Card as required by the Farm Labor Contractors Registration Act. In addition, if Crewleader (or Crewleader's Employee) is to Drive, Transport, and/or House workers, he must have Driving Authorized, Transportation Authorized and Housing Authorized Cards for labor camps to be used, as required by the Farm Labor Contractors Registration Act. NO REFERRALS ACCEPTED OF CREWLEADERS CURRENTLY ACTING IN VIOLATION OF THE FARM LABOR CONTRACTORS REGISTRATION ACT.

Any and all Supervisors or Drivers employed by the Crewleader must be properly registered and have current and valid Farm Labor Contractor Cerificate of Registration or Employee Identification Cards.

All workers hired under this job order will have to provide evidence of United States Citizenship, or status as Alien legally admitted into the United States to work. Acceptable evidence of United States Citizenship shall include:

1. Birth Certificate
2. United States Passport
3. Certificate of Citizenship
4. Certificate of Naturalization
5. U.S. Identification Card (INS Form I-179 or I-197)
6. Consular Report of Birth (State Department Form FS-240)

Acceptable evidence of status as Alien legally admitted into the United States to work shall include:

1. INS Form I-151, Alien Registration Receipt Card
2. INS Form I-94

Depending on the functions he is to perform, Crewleader must be responsible for the following services:

1. Recruitment of qualified workers.
2. Furnish grower with Names Addresses, and Social Security Numbers of all members of the crew. The Social Security Number is required to be furnished under authority of law.
3. Transportation of workers from point of recruitment to job site and return to point of recruitment at the end of the employment period. Transportation of the workers from camp to field each workday at no cost to the workers. This transportation of workers by the Crewleader, or the Crewleaders properly registered employee, to be done only in properly licensed vehicles with adequate insurance coverages as required by law, and properly registered with the Department of Labor and listed on a Transportation Authorized Card, as required under the Farm Labor Contractors Registration Act.

ATTACHMENT NUMBER 1

(page 2 of 2 pages)

4. Supervision of the workers on the job site to insure that work is completed to the specifications set by the Grower/Employer.
5. Supervision of the workers in the camp area, and insure that sanitary conditions are maintained. Housing will be approved by the Washington County (Maryland) Health Department prior to the arrival of the crew. It will be inspected on arrival of the crew by the Grower and Crewleader, and again at the time of departure of the crew. Crewleader will be held responsible for any damages attributable to the Crewleader or any member of the crew over and above normal usage depreciation. Housing will be inspected periodically by the Labor Department, Health Department, and the Owner. Crewleader will see that the housing occupied by his crew is kept in a reasonably clean and sanitary condition, that all garbage, cans, bottles, etc., are placed in containers supplied for that purpose. This debris to be removed at least once a week and properly disposed of according to arrangements made with grower.
6. Crewleader will be responsible for all equipment, ladders, blankets, pillows, bedding, etc. issued his workers by the grower, and to be accounted for before final payment is made to the crewleader.

Crewleaders Pay: Crewleader will be paid on the basis of $4.00 per hour for pervision of workers in the field.

Negotiable Items: Depending on the additional functions to be performed by the Crewleader, and the extent to which Crewleader will perform such functions, compensation to the Crewleader is negotiable between Grower and Crewleader for the following services:

1. Who maintains payroll records and pays workers.
2. Who withholds Employee's share of Social Security Taxes
3. Who pays Employer's share of Social Security Taxes
4. Who is responsible to pay Federal and State Unemployment Insurance Premiums and Taxes.
5. Who is to Transport workers.
6. Who is to provide Workmen's Compensation Insurance Coverages for workers.

Interstate transportation of Migrant Workers requires compliance with Interstate Commerce Commission Regulations. The State of Maryland requires a permit to operate an out-of-state vehicle for over ninety (90) days.

Employer:____________ ______________________ Date:____________

Employer:____________________ ESARS Order Number:________________

Occupational Title and Code: FARMWORKER, FRUIT (AGRIC) II 403.687.010

ATTACHMENT NUMBER 2

ITEM # 8, WAGE RATES, SPECIAL PAY INFORMATION AND DEDUCTIONS

Applies to All Operations, Pruning, Cultivating & etc.:

Workers are paid the guaranteed wage equal to the Federam required minimum of $3.10 per hour. The current Adverse Effect Rate or Prevaling Wage Rate, if higher than the Federal minimum wage is guaranteed. Guaranteed wages are based on the total number of hours worked, averaged on a bi-weekly basis.

Without prejudice to the employment guarantee for opportunity of working not less than 75% of the work days during the total contract period, the employer shall provide sufficient work to enable the worker, being willing and able to work, to earn a sum not less than the sum of $70.00 (hereinafter referred to as the stipulated minimum earnings) in respect of each bi-weekly payroll period, or pay the worker an allowance of a sum which togeather with the sum earned by the worker during such payroll period will equal the stipulated minimum earnings, or if the worker has not earned any wages during such period, the employer shall pay to the worker a sum in the amount of the stipulated minimum earnings.

Only authorized or legal deductions will be taken from the worker's pay. Grower retains the option of paying workers by individual check or paying the crewleader for distribution to his workers.

Employer:____________________ Date Signed: 1/7/80

Employer:____________________ ESARS Order Number:______________

403.687.010
Occupational Title and Code: FARMWORKER, FRUIT (Agric) II Date:______________

ATTACHMENT NUMBER 3

Payroll Information when Crewleader Negotiates to Maintain Payroll Records:

1. Workers are to be paid $3.10 per hour in all operations. Worker's are further guaranteed the current Adverse Effect Rate or the Prevailing Wage Rate, if higher than the Federal minimum wage.

2. Crewleader must provide the grower copies of complete, detailed, and accurate payroll records prior to any payments from Grower to Crewleader. These records must include at a minimum the following information:

   a) Each worker's Name, Social Security Number, and permanent home address.

   b) Copies of any work permits required by Maryland laws.

   c) For each workday, the number of hours of work offered, the number of hours actually worked, and the number of units picked by each worker. Any differences in hours of work offered and hours actually worked to be fully explained and written on daily time sheets.

   d) Copy of payroll summary showing the unit rate (or hourly rate) paid to the workers, the gross payment, and all deductions made from each employee.

3. When the Crewleader acts as the employer, the Crewleader is responsible for and required to remit to the appropriate Federal and State Agencies amounts due under Federal and State Unemployment Compensation Insurance Laws for all members of the crew.

4. When the Crewleader acts as the employer, the Crewleader is responsible for deductions from worker's pay under the F.I.C.A. (Social Security) laws and required to remit same to the appropriate taxing authority. Further, the Crewleader will be responsible for the employer's portion of the tax due under the F.I.C.A. (Social Security) laws, and required to remit same to the appropriate taxing authority.

Employer:______________ Date Signed: 1/7/80

Employer:________________________________ ESARS Order Number:____________________

Occupational Title and Code: FARMWORKER, FRUIT (Agric) II 403.687.010

ATTACHMENT NUMBER 4

EM # 11, JOB SPECIFICATIONS:

1. Working Conditions: This type of work is performed out of doors where the worker is generally exposed to both hot and cold (or cool) weather. Work week consists of 6 days per week and 8 hours per day.

2. Physical Demands: Workers must be able to remain on feet for prolonged periods, standing on ground or ladders up to 24 feet in length. Workers should have normal balance control and full use of arms and legs with good eye-hand coordination. Worker should not be subject to dizzy spells, fainting, or rupture. Workers must be free of communicable diseases.

3. Nature of Work: Worker will cut away dead and excess branches from fruit trees, using handsaws, pruning hooks and shears, and long handled clippers. May use turck-mounted hydraulic lifts and pruners and power pruners. Object is to cut limbs that touch, grow at bad angles, or that are too thick, so that air and sunlight may enter into the interior of the tree during the growing season. Worker may also be required to remove cut branches from under the tree and place same in the rows. Workers will also cultivate ground around trees and remove brush using hand hoes, rakes, and similar equipment.

ployer:_ Date Signed: 1/7/80

Employer: ______________________ ESARS Order Number: __________

Occupational Title and Code: 403.687.010 FARMWORKER, FRUIT (Agric.) II Date: __________

ATTACHMENT NUMBER 5

ITEM 13, BOARD ARRANGEMENTS:

Crewleaders have the option of providing meals to their crew, or if they do not so elect, meals will be provided by the employer at a cost not to exceed $4.00 per day. If provided by employer, three (3) meals per day will be furnished: a hot breakfast and supper and a cold lunch.

ITEM 14, LOCATION AND DESCRIPTION OF HOUSING:

Housing with beds, matresses, pillows, linnen and blankets will be available at no cost to the worker.

ITEM 15, REFERRAL INSTRUCTIONS:

Referral of individual workers and/or crewleaders can be made under this job order. All referrals under this clearance order are to be made from the applicant holding office, to the Employer. Follow-up contact by Applicant Holding Office to Order Holding Office requested.

The referral of crewleaders must be accompanied by proof of complete and valid registration under the Farm Labor Contractors Registration Act for functions the crewleader will perform.

Employer: ____ Date Signed: 1/7/80

Employer: ______________________________ ESARS Order Number: ____________

Occupational Title and Code: 403.687.010 FARMWORKER, FRUIT (Agric.) II Date: ____________

ATTACHMENT NUMBER 6

ITEM 17, TRANSPORTATION ARRANGEMENTS:

For each worker who continues under employment for a period of fourteen (14) consecutive calander days from the commencement of his employment and/or 50% of the employment period, whichever is shorter, the Grower agrees to reimburse those reasonable in-bound transportation and subsistence expenses incurred by the worker from the point of recruitment to the job site. For any worker who is unable to complete 14 days of employment for legitimate medical reasons, the Grower agrees to reimburse in-bound transportation and subsistence expenses incurred by the worker. In addition, those individuals paying such in-bound transportation and subsistence expenses who are terminated by the Grower as a result of an act of God (an act of God shall mean any hail, frost storm, flood, drought, earthquake, forest fire, or other natural calamity of a character to make further fulfillment of this contract impossible), or as a result of a mutual agreement of worker and grower, those workers will also be reimbursed for their expenses. All payments aforesaid shall be due not later than the first workday subsequent to the completion of the aforesaid fourteen (14) day period.

If the worker complets his contract, the grower will provide or pay the cost of return transportation and subsistence en-route from the place of employment to the place of recruitment, except when the worker is not returning to the place of recruitment and has subsequent employment with an employer who will be bearing these transportation and subsistence expenses.

All transportation provided by the grower will be by common carrier or other transportation facilities which conform to applicable regulations of the Interstate Commerce Commission.

Transportation from the worker's on-the-job site living quarters to the place where the work is to be done will be provided without cost to the worker.

If the worker voluntarily abandons his employment, or is terminated for cause, prior to completion of his contract, the employer will not be responsible for providing or paying for the cost of return transportation and subsistence expenses en-route from the place of employment to the place of recruitment.

Note: The employer shall provide a suitable burial for the worker if he dies during the continuance of his employment hereunder, or in lieu thereof at the request of the next of kin, pay the cost involved in the preparation and transportation of the deceased worker to the place of origination.

Employer: ____________ Date Signed: 1/7/80 ployer: ______________________________ ESARS Order Number: ______

upational Title and Code: 403.687.010 FARMWORKER, FRUIT (Agric.) II Date: ______________

ATTACHMENT NUMBER 7

LABOR CAMP RULES AND REGULATIONS

Violation of any of the following rules will result in immediate dismissal of person or persons from the labor camp and employment.

1. Selling of acholic beverages or tobacco products in the camp. This is illegal by State of Maryland Law.
2. Using areas of camp other than rest rooms provided for human waste disposal.
3. Fighting, larceny, dope addiction, drunkeness and unnecessary noise making at night.
4. Unnecessary damage or destruction of camp property.
5. Failure to report for work or work days unless sick.
6. Persons who have a known history of immoral or illegal behavior and/or who exhibit such behavior may be excluded from the camp at the descretion of the grower.
7. Rooms must be kept clean, all trash and refuse be removed from the rooms and placed in proper containers before reporting for work. Grower supplies cleaning equipment and supplies.
8. Throwing of paper, cans, bottles and other refuse in the camp area is forbidden. Such refuse must be placed in the receptacles provided.

Employer: ____ Date Signed: 1/7/80

Page 1 of 2

OMB 44-R 1300

STATE OF MARYLAND
DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES
EMPLOYMENT SECURITY ADMINISTRATION

EMPLOYER FURNISHED HOUSING AND FACILITIES

U.S. DEPARTMENT OF LABOR - Manpower Administration
U.S. Employment Service (See instructions on Reverse)

1. EMPLOYER'S NAME AND ADDRESS

2. HOUSING LOCATION

3. HOUSING DESCRIPTION
Three (3) story frame structure remodeled to conform to requirements of Federal Register 20 CFR 620, with a central kitchen and dining area.

4. SLEEP ROOMS (No. & Measure)	a. Dormitory Type				b. Family Type			
	1	2	3	4	1	2	3	4
Length	79'0"	19'4"	17'0"	17'0"	-------NONE		---------	
Width	35'0"	10'3"	11'5"	10'5"				
Ceiling Height	8'0"	8'0"	8'0"	8'0"				
Square Feet	2765	198	187	166				
No. of Rooms	1	1	1	1				
No. of Beds, Single	46	4	3	3				
No. of Beds or Bunks, Double	0	0	0	0				

7. FACILITIES (Number of each)

Toilets 10	Privy 0	Urinals 3	Lav. or Washbasins 10	Showerheads 10
Bathtubs 0	Movable Bathtubs 0	Laundry machines 1-washer 1-dryer	Fixed laundry tubs 1-2 well	Movable laundry tubs 0
Cook Stoves 2-gas Commercial	Refrigerators 1-freezer 1-ref. Commercial	Garbage containers 5 - 20 gal.	First-aid Kits 1	Fire Extinguishers (No. & type) 4

ES USE ONLY

5. CAPACITY (Adults)
80

6. REGULATIONS COMPLIANCE ("X" proper box)

	Yes	No
Water		
Electricity		
Site		
Screening		
Heating		

8. COMMENTS
I, certify that I have reviewed the housing requirements of the U.S. Department of Labor, Bureau of Employment Security, and that our housing located in the Hancock, Md. area does meet these minimum acceptable standards, or will meet such standards at least 45 days prior to the arrival of any workers (see page 2)

9. EMPLOYER'S CERTIFICATION:
I CERTIFY THAT I have reviewed the housing regulations of the U.S. Department of Labor, U.S. Employment Service, and that the housing described herein ☐ meets ☑ does not meet such standards. I hereby authorize representatives of the State Employment Service office and/or Manpower Administration regional office to inspect the above housing at any reasonable time.

Employer's Signature	Typed Name and Title	Date
		1/7/80

HOUSING INSPECTED BY:

Signature of Authorized Official	Typed Name and Title	Date

11. APPROVAL: Housing approved for occupancy by workers recruited interstate.

Signature of Authorized Official	Typed Name and Title	Date

ES-338
Oct. 1973

Page 2 of 2

OMB 44-R 1388

STATE OF MARYLAND
DEPARTMENT OF EMPLOYMENT AND SOCIAL SERVICES
EMPLOYMENT SECURITY ADMINISTRATION

EMPLOYER FURNISHED HOUSING AND FACILITIES

U.S. DEPARTMENT OF LABOR - Manpower Administration
U.S. Employment Service (See instructions on Reverse)

1. EMPLOYER'S NAME AND ADDRESS

2. HOUSING LOCATION

3. HOUSING DESCRIPTION

see page 1

4. SLEEP ROOMS (No. & Measure)	a. Dormitory Type				b. Family Type			
	5	6	7	8	1	2	3	4
Length	17'0"	17'0"	17'0"	13'0"	----NONE----------			
Width	10'8"	10'0"	15'9"	79'0"				
Ceiling Height	8'0"	8'0"	8'0"	8'0"				
Square Feet	175	160	252	1027				
No. of Rooms	1	1	1	1				
No. of Beds, Single	3	3	3	15				
No. of Beds or Bunks, Double	0	0	0	0				

ES USE ONLY

5. CAPACITY (Adults)

6. REGULATIONS COMPLIANCE ("X" proper box)	Yes	No
Water		
Electricity		
Site		
Screening		
Heating		

7. FACILITIES (Number of each)

Flush Toilets	Privy	Urinals	Lav. or Washbasins	Showerheads
Bathtubs	Movable Bathtubs	Laundry machines	Fixed laundry tubs	Movable laundry tubs
Cook Stoves	Refrigerators	Garbage containers	First-aid Kits	Fire Extinguishers (No. & type)

8. COMMENTS recruited through the Employment Security Interstate Clearance facilities. I hereby authorize representatives of the local State Employment Service office and/or Regional Office of the Bureau of Employment Security to inspect the housing I am offering such workers at any reasonable time to verify its condition. I request these orders be conditionally allowed into the interstate system even though the housing does not meet standards as of this date.

9. EMPLOYER'S CERTIFICATION:

I CERTIFY THAT I have reviewed the housing regulations of the U.S. Department of Labor, U.S. Employment Service, and that the housing described herein ☐ meets ☒ does not meet such standards. I hereby authorize representatives of the State Employment Service office and/or Manpower Administration regional office to inspect the above housing at any reasonable time.

Employer's Signature	Typed Name and Title	Date 1/7/80

HOUSING INSPECTED BY:

Signature of Authorized Official	Typed Name and Title	Date

11. APPROVAL: Housing approved for occupancy by workers recruited interstate.

Signature of Authorized Official	Typed Name and Title	Date

ES-338
Oct. 1973

Employer: ______________________ ESAPS Order Number: ______________

Occupational Title and Code: 403.687.010 FARMWORKER, FRUIT (Agric.) II Date: ______________

ATTACHMENT NUMBER 8

SELF CERTIFICATION STATEMENT:

I certify that the housing provided by me meets, or will meet prior to occupancy, Federal or State standards, whichever are higher.

Firm: ____
Signature
Title: ______________
Date: January 7, 1980

I, ______________________ certify that I have reviewed the housing requirements of the U. S. Department of Labor, Bureau of Employment Security, and that our housing located in and around the area of Hancock, Maryland ______________ does meet these minimum acceptable standards, or will meet such standards at least 45 days prior to the arrival of any workers recruited through the Employment Security Interstate Clearance facilities. I hereby authorize representatives of the local State Employment Service office and/or Regional Office of the Bureau of Employment Security to inspect the housing I am offering such workers at any reasonable time to verify its condition.

Firm: ____
Signature:
Title: ______________
Date: January 7, 1980

Employer:______________________ ESARS Order Number:______________

Occupational Title and Code: 403.687.010 FARMWORKER, FRUIT (Agric.) II Date:______________

ATTACHMENT NUMBER 9

In view of the statutorily established basic function of the Employment Service as a no fee labor exchange, that is, as a forum for bringing togeather employers and job seekers, neither the ETA nor the State Agencies are guarantors of the accuracy or truthfullness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the ES constitute a contractual job offer to which the ETA or a State Agency is in any way a party.

I hereby assure that the working conditions of my order comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractors registration act, and other Employment related laws: and that I will provide a copy of the work contract to the worker in English or in Spanish if the worker is not fluent or literate in English.

This job offer describes the actual terms and conditions of the employment being offered by me, and contains all the material terms and conditions of the job.

January 7, 1980
Date

Firm:

Signed:

Title:

WORK AGREEMENT FOR DOMESTIC LABOR ENGAGED AS FRUIT FARMWORKER

WITNESSETH:

ARTICLE I
GENERAL PROVISIONS

During the period from the 1st day of April, 1980, to the 6th day of June, 1980, the employer agrees to provide agricultural employment and the worker agrees to perform the work required of him as specifically set forth in the relevant Clearance Order Rural Manpower Job Offer Form ES 7-90, as amended.

ARTICLE II
LODGING

The employer agrees to furnish nonresident workers, upon his arrival at the place of employment and throughout the entire period of employment, without cost to the worker, sanitary facilities and hygenic lodgings in accordance with the requirements of all applicable local, state and federal regulations.

ARTICLE III
INSURANCE FOR OCCUPATIONAL INJURY OR DISEASE

The employer agrees to provide at no cost to the worker the guarantees with respect to medical care and compensation for personal injury arising out of and in the course of the worker's employment hereunder and for disease contracted in the course of such employment and directly attributable to the work in which the worker is engaged required under applicable state laws, and with the requirements of Part 655.202 (b) (2) (i), Chapter V, Title 20 of the Code of Federal Regulations.

ARTICLE IV
PAYMENT OF WAGES

(a) The employer agrees to pay to the worker at not less than:

A guarantee of $3.30 or the current adverse effect rate, or the current prevailing wage rate (whichever is higher) per hr., the applicable rate in accordance with the Regulations of the Secretary of Labor (20 C.F.R. 655.207). Where the prevailing rate in the area for the work being performed is higher, the higher rate shall be paid. Piece rates shall be designed to produce average hourly earnings at least equivalent to the specified hourly rate indicated in this article, and in no event shall the worker be paid less than such hourly rate; (b) The employer agrees to make payment of wages in accordance with prevailing practice in the area of employment, but in no event shall the worker be paid less frequently than bi-weekly; (c) If a worker works on Sunday or any of the holidays specified in Article VIII, he shall be paid for such day and in no case less than the rate prevailing for similar work performed in the area on such day and in no case less than that specified in part (a) of this Article. Where both U.S. and foreign workers are engaged in the same tasks, wage rates that favor one such group and thereby discriminate against the other may not be paid; (d) Employer will, during the continuance of the worker's employment hereunder, provide sufficient work to enable the worker being able to work, to earn a sum of not less than $ 70.00 in respect of each payroll period of two weeks, or pay the worker an allowance of a sum which together with the sum earned by the worker during such payroll period will equal the stipulated minimum earnings; or if the worker has not earned any wages during such period, the employer shall pay to the worker a sum in the amount of the stipulated minimum wages.

ARTICLE V
TOOLS AND EQUIPMENT

The employer agrees to provide the worker, without cost to such worker, all tools, supplies, or equipment required to perform the duties assigned to him under this contract.

ARTICLE VI
DEDUCTIONS

The employer agrees to limit deductions from wages to the following: (1) taxes required by law; (2) those for advances of wages; (3) payment for articles of consumption produced by the employer which the worker has purchased; (4) value of meals supplied by the employer, but not to exceed amounts specified in Article II; (5) overpayment of wages; (6) any loss to the employer due to a worker's refusal or negligent failure to return any property furnished to him by the employer, or due to such worker's willful destruction of such property; (7) deductions for transportation and subsistence costs paid for by the employer as provided in Article VII of this contract. At the termination of the work contract, however, or if the worker abandons his work contract, the employer may deduct from such worker's final wage payment any outstanding balance due the employer for deductions permitted by this provision.

ARTICLE VII
TRANSPORTATION

The employer agrees to reimburse the worker for the cost of transportation and subsistence on route from the place from which the worker, without intervening employment, will come to work for the employer, to the place of employment upon completion by the worker of at least 14 days or 50 percent of the contract, whichever occurs first.

If the worker complete his contract, the employer will provide or pay the cost of return transportation and subsistence on route from the place of employment to the place of recruitment, except when the worker is not returning to the place of recruitment and has subsequent employment with an employer who will bear transportation expenses. All transportation provided by the employer will be by common carrier or other transportation facilities which conform to applicable regulations of the Interstate Commerce Commission. Transportation from the worker's on-the-job site living quarters to the place where the work is to be performed will be provided by the employer without cost to the worker. Employer shall provide a suitable burial for the worker if he dies during the continuance of his employment hereunder, or in lieu thereof at the request of the next of kin pay the cost involved in the preparation and transportation of the deceased worker to the place of orgin.

ARTICLE VIII
EMPLOYMENT GUARANTEE

The employer guarantees each worker the opportunity for employment for at least three-fourths of the workdays of the total period during which the work contract and all extensions thereof are in effect, beginning with the first workday after the worker's arrival at the place of employment and ending on the termination date specified in the work contract, or its extensions, if any. For purposes of the work contract, a workday shall mean any period consisting of 8 hours of work time except Sabbath or Federal holidays. If the worker, during such period, is afforded less employment than required under this provision, the worker shall be paid the amount which he would have earned had he, in fact, worked for the guaranteed number of days. Where wages are paid on a piece rate basis, the worker's average hourly earnings shall be used for the purpose of computing amounts due under this guarantee. In determining whether the guarantee of employment has been met, any hours which the worker fails to work during a workday when he is afforded the opportunity to do so by the employer, and all hours of work performed, shall be counted in calculating the days of employment required to meet this guarantee. If, before the expiration date specified in the work contract the services of the worker are no longer required for reasons beyond the control of the employer (due to an Act of God such as frost, flood, drought, earthquake, hail, forest fire, or other natural calamity of such character to make the fulfillment of the contract impossible), and this fact is determined by the Regional Administrator, the work contract may be terminated and efforts will be made to transfer the worker to other comparable employment. If such transfer is not effected, the worker shall be returned to the place from which the worker, without intervening employment, came to work for the employer, at the employer's expense. In either event, deductions for transportation and subsistence on route made pursuant to Article VII of this contract shall be refunded. Whenever the contract is terminated under this provision, the employer shall be responsible for the three-fourths guarantee for the period beginning with the first workday after the worker's arrival at the place of employment and ending with the date the work contract is terminated, and the employer shall pay the worker all other amounts due under the contract.

- continued on back of this page -

ARTICLE IX
MEALS

When the employer furnishes meals to the worker, they shall be furnished at cost, but in no event shall the charge to the worker exceed $ 4.00 per day.

ARTICLE X
MAINTENANCE OF RECORDS AND STATEMENT OF WORK AND EARNINGS

The employer shall keep accurate and adequate records in regard to all earnings and hours of employment. Such records shall include information showing the nature of the work performed, the number of hours offered each day to each worker, the rate of pay, the amount of work performed by each worker, the earnings of each worker, and deductions made from each worker's wages. If the number of hours worked is less than the number of hours offered, the records shall state the reason therefor. Such records shall be made available at any reasonable time for inspection by representatives of the Secretary of Labor and by workers or their representatives. Such records shall be retained for a period of not less than three years following the completion of the contract. With respect to each pay period, the worker shall be furnished, at the time he is paid of such pay period, a statement which shows his total earnings for the pay period, the rate of pay, the hours offered and worked, the units produced where piece rates are used, and an itemization of all deductions made from wages.

ARTICLE XI
TERMINATION

If the employer determines that the worker is unwilling to work in accordance with the terms of the agreement or determines that the worker has committed an act of misconduct or if the worker is responsible for grossly negligent or wilful damage to property of the employer, or if the worker fails to abide by all reasonable camp rules, the employer shall be entitled immediately to terminate his employment hereunder. When the worker's employment is terminated pursuant to the provisions of this Article, the employment guarantee provided for in Article VII shall not be applicable and any balance of the amount advanced by the employer for transportation expenses under Article VII of this agreement that remains unpaid at the termination of the worker's employment shall be repaid by him to the employer.

Area of Employment: Hancock, Maryland

Activities & Wage Rate: Pruning & cultivating of trees paid at rate of $3.10 per hour. Current adverse effect rate, or current prevailing wage rate, if higher, is also guaranteed.

Employer:_

by: (signa

Title:___

Worker's Signature (s):

ATTACHMENT 3

U.S. Department of Labor

Employment and Training Administration
P.O. Box 8796
Philadelphia, Pennsylvania 19101

Reply to the Attention of: III TGRC

JUN 25 1981

Dear

On June 2, 1981, this office accepted a temporary labor certification application from you for 4 temporary alien workers. Pursuant to the provisions of 20 CFR 655.206, it has been determined that there are not sufficient U.S. workers available to fill all of the job opportunities. Therefore, I hereby certify that there are not sufficient U.S. workers available and the employment of these aliens will not adversely affect the wages and working conditions of U.S. workers similarly employed.

Certification is granted as follows:

A.	Number of workers	4
B.	Crop Activity	Tobacco
C.	Area of Employment	South Hill, VA
D.	Duration	July 15, 1981 - October 1, 1981

Consistent with the Act and Regulations, growers will consider for employment all U.S. workers who are referred and will not refuse to hire any available worker for other than job related reasons until 50 percent of the contract period is completed.

As provided by 20 CFR 655.206(b), this certification is issued subject to the conditions and assurances made during the application process and the provisions of 655.206(d). Your certified MA 7-50B is being returned to you.

Sincerely,

Richard E. Panati

RICHARD E. PANATI
Certifying Officer

Enclosure

ATTACHMENT 4

Form approved
OMB No. 43-R0348

UNITED STATES
DEPARTMENT OF JUSTICE
Immigration and Naturalization
Service

PETITION TO CLASSIFY NONIMMIGRANT AS TEMPORARY WORKER OR TRAINEE

Date Filed

Fee Stamp

File No.

(To be submitted in duplicate, with supplementary documents described in instructions, to the District Director having administrative jurisdiction over the place in the United States in which it is intended the alien(s) be employed or trained)

(THIS BLOCK NOT TO BE FILLED OUT BY PETITIONER)

The Secretary of State is hereby notified that the alien(s) for whom this petition was filed is (are) entitled to the nonimmigrant status checked below:

☐ H-1 ☐ H-3
☐ H-2 ☐ L-1

The validity of this petition will expire on________________,
The admission of the alien(s) may be authorized to the above date.

DATE OF ACTION
DD
DISTRICT

REMARKS:

(PETITIONER NOT TO WRITE ABOVE THIS LINE)
(PLEASE FILL IN WITH TYPEWRITER OR PRINT IN BLOCK LETTERS IN INK)

I hereby petition, pursuant to the provisions of section 214(c) of the Immigration and Nationality Act, for the following: (Check one.)

H-1 ☐ Alien(s) of distinguished merit and ability to perform services of an exceptional nature requiring such merit and ability.

H-2 ☒ Alien(s) to perform temporary service or labor for which a bona fide need exists. (One who is to perform duties which are themselves temporary in nature.)

H-3 ☐ Alien trainee(s). (One who seeks to enter at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving training in any field of endeavor. Incidental production necessary to the training is permitted provided a United States worker is not thereby displaced.)

L-1 ☐ Intra-company transferee. (One who has been employed continuously for one year and who seeks to enter in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity or in a capacity which involves specialized knowledge.)

1. NAME OF PETITIONER
Virginia-Carolina Agricultural Producers Assoc., Inc.

2. DATE BUSINESS ESTABLISHED
12-1-78

3. ADDRESS (NUMBER, STREET, CITY, STATE, ZIP CODE)
P. O. Box 26, South Hill, Virginia 23970

4. DESCRIPTION OF PETITIONER'S BUSINESS, INCLUDING ITS NATURE, NUMBER OF EMPLOYEES, AND GROSS ANNUAL INCOME
A non stock corporation consisting of individual member/growers of tobacco and other farm products in Va. and North Carolina. The Assoc. has two paid employees and a gross annual income of $75,000 per year.

5. LOCATION OF AMERICAN CONSULATE AT WHICH ALIEN(S) WILL APPLY FOR VISA(S): (City in Foreign Country) Mexico City (Foreign Country) Mexico

(If petition is to be made for more than one H alien and application for visas will be made at more than one American Consulate, a separate petition must be submitted for each consulate at which H visa applications will be made. Separate petition must be filed for each L-1 alien.)

6. THE ALIEN(S) WILL PERFORM SERVICES OR LABOR FOR OR RECEIVE TRAINING FROM THE FOLLOWING ESTABLISHMENT:
(Name of Establishment) Virginia-Carolina Agricultural Producers Association, Inc.
(Street and Number) P. O. Box 26 (City or Town) South Hill (State) Virginia (Zip Code) 23970

. PERIOD REQUIRED TO COMPLETE SERVICES OR TRAINING From (date)	To (date)	No. of days or months	8. WAGES PER WEEK	8A. HOURS PER WEEK	9. OVERTIME RATE
4-15-81	10-1-81	5 1/2 months	$160.80	48	N/A

10. OTHER COMPENSATION (Explain)	10A. VALUED AT	11. BY WHOM PAID?
None	$ N/A WEEKLY	N/A

Form I-129B
(Rev. 3-25-76)N

RECEIVED	TRANS. IN	RET'D-TRANS. OUT	COMPLETED

7

ALL PETITIONERS COMPLETE ITEMS 12A THROUGH 22. If petition is for more than one H alien, give required information for each additional alien in space provided on page 3. If the identity of the H aliens is not known at present, you must furnish information concerning them as soon as that information becomes known to you.

12A. ALIEN'S NAME (Family name in capital letters) (First name) (Middle name)
Thirty-One (31) Mexican Nationals

12B. OTHER NAMES (Show all other past and present names, including maiden name if married woman.) N/A

12C. NUMBER OF ALIENS INCLUDED IN THIS PETITION 31

13. ADDRESS TO WHICH ALIEN WILL RETURN (Street and Number) (City) (Province) (Country)
Same as current address in all cases

14. PRESENT ADDRESS Unknown

15. PROPOSED PORT OF ENTRY Laredo, Texas

16. DATE OF BIRTH N/A

17. PLACE OF BIRTH N/A

18. PRESENT NATIONALITY OR CITIZENSHIP Mexican

19. PRESENT OCCUPATION Farmworker

20. HAS AN IMMIGRANT VISA PETITION EVER BEEN FILED ON THE ALIEN'S BEHALF? ☐ YES ☒ NO
If "Yes", where was it filed?

21. HAS THE ALIEN EVER APPLIED FOR AN IMMIGRANT VISA OR PERMANENT RESIDENCE IN THE U.S.? ☐ YES ☒ NO
If "Yes", where did he apply?

22. TO YOUR KNOWLEDGE, HAS ANY VISA PETITION FILED BY YOU OR ANY OTHER PERSON OR ORGANIZATION FOR THE NAMED ALIEN(S) BEEN DENIED? ☐ YES ☒ NO
If you answered "yes", complete the following: Date of filing of each denied petition ______
Place of filing of each denied petition (city) ______
TO YOUR KNOWLEDGE, HAVE ANY OF THE NAMED ALIEN(S) EVER BEEN IN THE U.S.? ☐ YES ☐ NO (If "yes" identify each on Page 3)

NONTECHNICAL DESCRIPTION OF SERVICES TO BE PERFORMED BY OR TRAINING TO BE RECEIVED BY ALIEN(S) (THIS BLOCK NEED NOT BE COMPLETED IF PETITION IS FOR H-2 WORKERS)

24. (If you are petitioning for an H-1 physician or nurse, complete this block.)
DOES THE LAW GOVERNING THE PLACE WHERE THE ALIEN'S SERVICES WILL BE PERFORMED RESTRICT HIM FROM PERFORMING ANY OF THE DESIRED SERVICES? ☐ YES ☐ NO If the answer is "yes", attach statement listing the restricted services and setting forth the reason for the restriction. (See instructions for Physicians and Nurses.)

25. (If you are petitioning for a trainee, complete this block.)
A. IS SIMILAR TRAINING AVAILABLE IN ALIEN'S COUNTRY? ☐ YES ☐ NO
B. WOULD ALIEN'S TRAINING RESULT IN DISPLACEMENT OF UNITED STATES WORKER? ☐ YES ☐ NO

26. (If you are petitioning for an L-1 alien, complete this block.) (Check appropriate boxes.)
a. The alien has been employed in an ☐ executive; ☐ managerial capacity; ☐ in a capacity which involves specialized knowledge

by ______ (name and address of employer) since ______ (date)

b. The petitioner is ☐ the same employer ☐ subsidiary ☐ an affiliate of the employer abroad.

FILL IN ITEMS 27 THROUGH 31 INCLUSIVE ONLY IF PETITION IS FOR H-2 ALIEN(S)

27. DESCRIPTIVE JOB TITLE OF WORK TO BE PERFORMED BY ALIEN(S) (Use title which corresponds to that used in job order placed with state Employment Service or Agency by petitioner for same type of labor. Where work in more than one job classification is to be performed by aliens, state number to be employed in each job classification.)
Farmworker, Field Crop
DOT 404.687-010

28. IS (ARE) ALIEN(S) SKILLED IN WORK TO BE PERFORMED? ☒ YES ☐ NO ☐ UNKNOWN

IS ANY LABOR ORGANIZATION ACTIVE IN THE LABOR FIELD(S) SPECIFIED IN ITEM 27? ☐ YES ☒ NO
(If "yes", specify organization(s) and labor field(s).)

30. IS THE PETITIONER INVOLVED IN, OR ARE THERE THREATENED, ANY LABOR RELATIONS DIFFICULTIES, INCLUDING STRIKES OR LOCK-OUTS? (Specify)
No

31. I HAVE NOT BEEN ABLE TO FIND IN THE UNITED STATES ANY UNEMPLOYED PERSON(S) CAPABLE OF PERFORMING THE DUTIES OF THE POSITION(S) TO BE FILLED. THE FOLLOWING EFFORTS HAVE BEEN MADE TO FIND SUCH PERSON(S): (Complete only if labor certification not attached.)
Labor Certification Attached

ALL PETITIONERS FILL IN ITEMS 32 THROUGH 34B.

32. LIST DOCUMENTS SUBMITTED IN SUPPORT OF THIS PETITION.
Labor Certification

THE DOCUMENTS SUBMITTED HEREWITH ARE HEREBY MADE A PART OF THIS PETITION.

I am willing to post any bond required as a condition to the approval of this petition.

If names not known, as soon as known I shall furnish the District Director to whom this petition is being submitted with the names of those alien(s) not named herein.

If the petition is for temporary worker(s), I certify that I have a bona fide need of such worker(s).

If the petition is for trainee(s), I certify he is coming to the United States to participate in a bona fide training program.

I certify that the statements and representations made in this petition are true and correct to the best of my knowledge and belief.

34A. SIGNATURE OF PETITIONER	DATE	34B. TITLE (Must be petitioner or authorized agent of petitioner)
	4-1-81	Executive Secretary Va.-Carolina Agricultural Prod. Assoc.Inc.

SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN PETITIONER

35. I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(Signature) (Address) (Date)

If this petition is for more than one alien of distinguished merit and ability (H-1) or trainee (H-3), use spaces below to give required information. If additional space is needed, attach separate sheet executed in same general manner.

NAME	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	OCCUPATION

PRESENT ADDRESS

ADDRESS TO WHICH ALIEN WILL RETURN

NONTECHNICAL DESCRIPTION OF SERVICES TO BE PERFORMED BY OR TRAINING TO BE RECEIVED BY ALIEN

NAME	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	OCCUPATION

PRESENT ADDRESS

ADDRESS TO WHICH ALIEN WILL RETURN

NONTECHNICAL DESCRIPTION OF SERVICES TO BE PERFORMED BY OR TRAINING TO BE RECEIVED BY ALIEN

NAME	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	OCCUPATION

PRESENT ADDRESS

ADDRESS TO WHICH ALIEN WILL RETURN

NONTECHNICAL DESCRIPTION OF SERVICES TO BE PERFORMED BY OR TRAINING TO BE RECEIVED BY ALIEN

If this petition is for more than one (H-2) alien to perform temporary service or labor, use spaces below to give required information. If additional space is needed, attach separate sheet executed in same general manner. Identify each alien who has been in the U.S. by placing an "X" in the last column.

NAME	NATIONALITY	DATE AND PLACE OF BIRTH	PRESENT ADDRESS	X

ATTACHMENT 5

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

AGREEMENT

between
Virginia-Carolina Agricultural
Producers Association, Inc.

Employer of alien labor under the provisions of
Section 101(a)(15)(H)(ii) of the
Immigration and Nationality Act
(66 Stat. 168)

and

The United States of America

THIS AGREEMENT made by Va.-Carolina Agr. Prod.Assoc.Inc located at South Hill, Virginia, hereinafter called "the employer", subject to approval and acceptance on behalf of the United States of America by a District Director of Immigration and Naturalization, witness as follows:

WHEREAS the employer desires from time to time to obtain the services of certain aliens, hereinafter called "agricultural workers", who are coming to or remaining in the United States temporarily to perform labor for which unemployed persons capable of performing such labor cannot be found in the United States;

AND WHEREAS the District Director has granted or from time to time will grant the employer permission to import and/or permission to continue employment in the United States of such agricultural workers, subject to revocation on notice, upon the terms and conditions hereinafter set forth by the employer;

NOW THEREFORE, in consideration of the foregoing, the employer does hereby covenant and agree:

(1) That the employer shall not employ any such agricultural workers in the United States except in strict compliance with the terms of a visa petition, hereinafter called the "petition", filed by the employer under the provisions of Section 214(c) of the Immigration and Nationality Act and approved by a District Director of the Immigration and Naturalization Service.

(2) That the employer shall not employ any such agricultural workers in excess of the number or beyond the period of time authorized in the petition as approved and as hereinabove set forth;

(3) That the employer shall employ such agricultural workers only in the occupations and only in the places stated in the petition as approved and as hereinabove set forth;

(4) That the employer shall employ only such agricultural workers as have been duly admitted to the United States as nonimmigrants within Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act or who by proper authority have had their status changed to such nonimmigrant classification;

(5)(a) That the employer shall furnish with the petition an alphabetical list in duplicate of the agricultural workers to be employed, showing name, date, port of entry, and when he is in the United States the agricultural worker's copy of his Arrival-Departure Record (Form I-94); but if the identity of the agricultural worker is not known at the time the petition is filed, such lists shall be filed with the immigration officer with whom the petition is filed within twenty-four hours after such agricultural worker commences employment with the employer;

(b) That, in the event any agricultural worker absconds, the employer shall notify the immigration officer with whom the petition was filed within twenty-four hours of the name of such agricultural worker and the known facts concerning the violation;

(c) That within twenty-four hours after termination of employment, the employer shall submit to the immigration officer with whom the petition was filed an alphabetical list, in duplicate, of the agricultural workers leaving his place of employment and their destination;

(6) That each such agricultural worker admitted to the United States or permitted to remain therein temporarily under the terms of this agreement shall depart from the United States without expense thereto

Form I-320B
(Rev. 9-1-75)N

immediately upon the co[illegible]sion of his services as an agricultural w[illegible]er with such employer or within thirty (30) days after notification to the employer by a District Director of Immigration and Naturalization of revocation for any reason of the authority under which the temporary stay of any such agricultural worker in the United States was permitted; and the employer shall within ninety (90) days thereafter furnish to the District Director of Immigration and Naturalization at ______________________ ______________________ evidence satisfactory to the District Director of the time and place of such departure; provided that the authorized transfer of an agricultural worker from the employer to another employer in the United States shall, when approved by a District Director of Immigration and Naturalization, be considered for the purposes of this agreement the same as a departure from the United States;

(7) That for each and every violation with respect to any agricultural worker of paragraphs (1) through (5) above, the employer shall pay to the United States of America as liquidated damages, and not as a penalty, the sum of ten ($10.00) dollars, lawful money of the United States; and that for each and every violation with respect to any agricultural worker of paragraph (6) above, the employer shall pay to the United States of America, as liquidated damages and not as a penalty, the sum of two hundred ($200) dollars, lawful money of the United States;

(8) That a District Director of Immigration and Naturalization shall retain authority for any reason and upon notice to the employer to revoke the authority under which the temporary stay of any agricultural worker in the United States may have been permitted.

(9) That this agreement shall cancel and supersede any prior agreement between the parties hereto with respect to the subject matter hereof (but not as to any rights and liabilities already accrued under any prior agreement), and shall take effect immediately upon its approval by a District Director of the Immigration and Naturalization Service.

(10) This agreement shall apply to each petition filed by the employer for temporary agricultural workers and shall remain in effect unless and until cancelled by either party upon ten days' notice in writing to the other party, but the cancellation shall not terminate any rights or liabilities hereunder already accrued, or which may thereafter accrue with regard to any agricultural worker employed by the employer prior to such cancellation.

IN WITNESS WHEREOF, this agreement has been signed, sealed, and delivered this ______________
______________ day of ______________, 19____, at ______________
______________.

W. R. Myers, Jr.

By W R Myers Jr

Title Executive Secretary

Attest:

Sandra B. O[illegible] SEAL

Title Secretary

______________, 19____

roved and accepted on behalf of the United States of America.

______________ (City and State)

______________ District Director

GPO [illegible]

UNITED STATES DEPARTMENT OF JUSTICE **ATTACHMENT 6**

Immigration and Naturalization Service
25 E Street, NW., Wash, D. 20538

NOTICE OF APPROVAL OF NONIMMIGRANT VISA PETITION OR OF EXTENSION OF STAY OF NONIMMIGRANT H OR L ALIEN

NAME AND ADDRESS OF EMPLOYER OR TRAINER

Virginia-Carolina Agricultural Producers Asso.
P.O. Box 26
South Hill, Virginia 23970

NAME OF BENEFICIARY OR BENEFICIARI
70 Workers

CLASSIFICATION
H-2

FILE NO.
WAS H 10592

DATE OF APPROVAL
8/26/81

PLEASE BE ADVISED THAT APPROVAL OF THE PETITION CONSTITUTES A DETERMINATION THAT THE BENEFICIARY IS CLASSIFIABLE UNDER A SPECIFIED NONIMMIGRANT CLASSIFICATION. THE APPROVAL CONSTITUTES NO ASSURANCE THAT THE BENEFICIARY WILL BE FOUND ELIGIBLE FOR VISA ISSUANCE. ADMISSION TO THE UNITED STATES OR CHANGE OF NONIMMIGRANT STATUS. ELIGIBILITY FOR VISA ISSUANCE IS DETERMINED ONLY WHEN APPLICATION THEREFOR IS MADE TO A CONSULAR OFFICER; ELIGIBILITY FOR ADMISSION OR CHANGE OF STATUS IS DETERMINED ONLY WHEN APPLICATION THEREFOR IS MADE TO AN IMMIGRATION OFFICER. ALSO, PLEASE NOTE THE ITEMS BELOW WHICH ARE INDICATED BY "X" MARKS CONCERNING THIS PETITION:

THE PETITION HAS BEEN APPROVED AND FORWARDED TO THE UNITED STATES CONSULATE AT WHICH THE BENEFICIARY OR BENEFICIARIES WILL APPLY FOR VISA ISSUANCE. ANY INQUIRY CONCERNING VISA ISSUANCE SHOULD BE DIRECTED TO THE CONSULATE AT telephonically advised AMCON Mexico City.

THIS SERVICE WILL BE UNABLE TO ANSWER ANY INQUIRY CONCERNING VISA ISSUANCE.

☐ THE PETITION HAS BEEN APPROVED. IT IS INDICATED THAT THE BENEFICIARY(IES) WILL NOT REQUIRE VISA(S) TO ENTER THE UNITED STATES. NOTICE OF APPROVAL OF THE PETITION HAS BEEN FORWARDED TO THE INTENDED UNITED STATES PORT OF ENTRY. PLEASE NOTIFY THIS OFFICE IMMEDIATELY OF ANY CHANGE IN THE INTENDED PORT OF ENTRY.

☐ THE PETITION HAS BEEN APPROVED. IT IS INDICATED THAT THE BENEFICIARY IS IN THE UNITED STATES. THE BENEFICIARY MAY APPLY TO CHANGE HIS STATUS TO THE NONIMMIGRANT CLASSIFICATION SHOWN ABOVE BY SUBMITTING THE ENCLOSED FORM I-506 TO THIS OFFICE. NO ASSURANCE IS MADE THAT SUCH APPLICATION WILL BE GRANTED.

☒ THE APPROVED PETITION IS VALID UNTIL 11/1/81.

☐ THE PETITION HAS BEEN APPROVED. THE BENEFICIARY WILL BE NOTIFIED OF THE DECISION ON HIS APPLICATION FOR CHANGE OF NONIMMIGRANT STATUS.

☐ THE TEMPORARY STAY OF THE BENEFICIARY(IES) IS AUTHORIZED TO ______.

☒ REMARKS Valid after 9/4/81

☐ DOCUMENTS WHICH YOU SUBMITTED IN SUPPORT OF YOUR PETITION HAVE SERVED OUR PURPOSE AND ARE RETURNED.

IMPORTANT

1. THE BENEFICIARY(IES) OF YOUR NONIMMIGRANT VISA PETITION MAY NOT REMAIN IN THE U.S. BEYOND THE PERIOD FOR WHICH THE PETITION IS VALID OR ANY EXTENSION OF STAY AUTHORIZED BY THIS SERVICE.

2. YOU ARE REQUIRED TO NOTIFY THIS OFFICE PROMPTLY IF THE EMPLOYMENT OR TRAINING SPECIFIED IN THIS PETITION IS TERMINATED BEFORE THE EXPIRATION OF THE AUTHORIZED STAY IN THE UNITED STATES OF THE BENEFICIARY(IES).

3. PLEASE ADVISE THE BENEFICIARY(IES) THAT THE ACCEPTANCE OF EMPLOYMENT OR TRAINING NOT SPECIFIED IN THIS PETITION WILL BE A VIOLATION OF NONIMMIGRANT STATUS.

INFORMATION REGARDING BENEFICIARY'S DEPARTURE AND RETURN

DO NOT MAKE COPIES OF THIS NOTICE. YOU MAY FURNISH IT TO ONLY ONE OF THE BENEFICIARIES WHO IS NOT IN POSSESSION OF A VALID "H" OR "L" VISA AND WHO DESIRES TO DEPART FROM AND RETURN TO THE UNITED STATES TO RESUME THE SAME EMPLOYMENT OR TRAINING DURING THE PERIOD FOR WHICH THE PETITION IS VALID OR FOR WHICH HIS STAY IN THIS COUNTRY HAS BEEN AUTHORIZED. A SIMILAR FORM NEEDED FOR ANY OTHER BENEFICIARY WHO WILL BE DOING SO MAY BE ISSUED BY THIS OFFICE UPON WRITTEN REQUEST BY THE EMPLOYER OR TRAINER FURNISHING THE NAME OF THE BENEFICIARY, FILE NUMBER, AND DATE OF APPROVAL AS SHOWN ON THIS FORM. IF A BENEFICIARY HAS AN "H" OR "L" VISA WHICH HAS EXPIRED, HE MAY APPLY TO THE DIRECTOR, VISA OFFICE, DEPARTMENT OF STATE, WASHINGTON, D.C., FOR REVALIDATION OF THAT VISA PRIOR TO DEPARTURE AND MAY SUBMIT THIS NOTICE WITH THAT APPLICATION. ALTERNATIVELY, IF A NEW VISA IS REQUIRED, HE SHOULD PRESENT THIS NOTICE TO AN AMERICAN CONSUL ABROAD. IF HE IS EXEMPT FROM THE VISA REQUIREMENT, HE SHOULD PRESENT THIS NOTICE AT A UNITED STATES PORT OF ENTRY. IF THE BENEFICIARY DESIRES TO RETURN TO THE SAME EMPLOYMENT OR TRAINING AFTER THE EXPIRATION OF THE VALIDITY OF THE PETITION OR AUTHORIZED TEMPORARY STAY SHOWN IN THIS FORM, A NEW PETITION WILL BE REQUIRED. THE BENEFICIARY MAY BE READMITTED TO THIS COUNTRY ONLY IF FOUND ADMISSIBLE UNDER THE IMMIGRATION LAWS WHEN HE RETURNS.

Form I-171C
(Rev. 9-1-77)Y

THIS COPY TO BE MAILED TO THE ATTORNEY OR REPRESENTATIVE, IF ANY

ATTACHMENT 7

VISITOR VISA INFORMATION

A VISA is necessary to apply for entry into the United States. Under U. S. law, all aliens seeking admission are presumed to require an immigrant visa unless they establish that they are entitled to receive a visa in one of the nonimmigrant categories. The most widely known nonimmigrant category is the VISITOR VISA, which is used by aliens who wish to enter the United States temporarily for business purposes or for tourism, visits to relatives and friends or similar reasons of pleasure. Other categories of nonimmigrant visas are required for persons with different temporary purposes of entry, such as students, participants in exchange programs, performing artists, ofessional journalists, representatives of foreign governments, etc.

TO APPLY FOR A VISITOR VISA

1. Complete this application form by PRINTING all of the answers.
2. Submit your passport with the completed application form. Your passport should be valid for at least six months longer than your intended period of stay in the United States.
3. Present a recent photograph 1 1/2 inches square with your usual signature written on the REVERSE side. Children under the age of sixteen are not required to submit a photograph.
4. Submit evidence substantiating the purpose of your trip and your intention to depart from the United States after a temporary visit. Examples of such evidence are (in cases of business trips) a letter from your employer or (in cases of pleasure trips) a statement outlining your plans while in the United States and explaining the reasons why you would return abroad after a short stay, such as family ties, employment or similar binding obligations in your home country. U. S. law prohibits aliens who are granted visitor visas from working in the United States; they must, therefore, demonstrate that they have adequate funds of their own or assurances that they will be supported there by some interested person. In this connection, evidence should also be submitted regarding the arrangements you have made to cover your expenses while in the United States.

VISAS BY MAIL: If you wish to apply for a VISITOR VISA without making a personal appearance at a Consular Office of the USA, complete this form after having carefully read all of the information contained there. Sign and date the form. Enclose all of the documentation requested above.

SUPPLY A SELF-ADDRESSED ENVELOPE - LARGE ENOUGH TO RETURN YOUR PASSPORT TO YOU. AFFIX SUFFICIENT POSTAGE TO THE ENVELOPE TO EXPEDITE THE RETURN OF YOUR PASSPORT.

NOTE: As soon as we receive your application, and if you are eligible, a VISITOR VISA will be stamped in your passport which will be returned to you promptly. If there is a question concerning your documentation or eligibility, you will be invited by mail or telephone to visit the Consular Office for a discussion of your plans to visit the USA for a temporary period.

APPLY FOR YOUR VISITOR VISA EARLY AND BEFORE YOU MAKE FINAL TRAVEL ARRANGEMENTS

Each traveler who enters the United States of America must have been vaccinated against smallpox within three years of entry as evidenced by a valid international certificate of vaccination. However, this requirement is not enforced at the present time in all cases. Consult your travel agent, carrier or local Public Health Authority for current information.

HOLIDAY NOTICE

Consular Offices are closed on all legal holidays of this country and of the United States of America.

Holidays of the USA

January 1 – New Year's Day
Third Monday of February – Washington's Birthday
Last Monday of May – Memorial Day
July 4 – Independence Day
First Monday of September – Labor Day
Second Monday of October – Columbus Day
Fourth Monday of October – Veteran's Day
Fourth Thursday of November – Thanksgiving Day
December 25 – Christmas Day

THIS APPLICATION FORM IS SUPPLIED GRATIS

OPTIONAL FORM 156
(FORMERLY FS-257A ENGLISH)
DEPT. OF STATE
JANUARY 1975

U.S. GOVERNMENT PRINTING OFFICE [illegible]

THIS APPLICATION FORM IS SUPPLIED GRATIS

VISITOR VISA APPLICATION

DO NOT WRITE IN THIS SPACE

VISA CATEGORY ____________

FOR MULTIPLE OR ___ APPLICATIONS

INDEF., DURING 48 MOS., OR ___ MOS.

ISSUED ON ____________

INTERVIEWER ____________

APPROVED ____________

APPLICANTS SHOULD PRINT THE FOLLOWING INFORMATION

PASSPORT NO. ____________

DATE OF ISSUE ____________

ISSUED BY ____________

EXPIRES ON ____________

1. FAMILY NAME   GIVEN NAME   MIDDLE NAME

2. ALSO KNOWN AS *(Insert Maiden Name, Professional, Stage, Religious Name and Aliases)*

3. NATIONALITY

4. PLACE OF BIRTH *(City, State, Country)*

5. DATE OF BIRTH *(Month,Day,Year)*

6. RESIDENTIAL ADDRESS *(include apartment no. and post zone)*

7. TELEPHONE AT RESIDENCE

8. OFFICE, WORK LOCATION, SCHOOL ADDRESS

9. TELEPHONE NO.

10. PRESENT PROFESSION OR OCCUPATION *(If Retired, State Past Profession)*

11. SEX

12. COLOR OF HAIR

13. COLOR OF EYES

14. HEIGHT

15. COMPLEXION *(fair, ruddy, olive, etc.)*

16. MARKS OF IDENTIFICATION *(Visible Scars, Moles)*

17. MARITAL STATUS
☐ Married ☐ Single ☐ Widowed ☐ Divorced

18. WHAT IS THE PURPOSE OF YOUR TRIP?

19. HOW LONG DO YOU PLAN TO STAY IN THE USA?

20. AT WHAT ADDRESS WILL YOU RESIDE IN THE USA?

21. WHEN DO YOU INTEND TO DEPART FOR YOUR STAY IN THE USA?

22. DO YOU INTEND TO WORK IN THE USA? ☐ Yes ☐ No

23. Who will pay for your round trip or onward tickets to allow you to depart from the USA at the end of your temporary visit?

24. IS YOUR SPOUSE NOW IN THE USA? ☐ Yes ☐ No

25. IS EITHER OF YOUR PARENTS IN THE USA? ☐ Yes ☐ No

OPTIONAL FORM 156
(FORMERLY FS-257A ENGLISH)
DEPT. OF STATE
JANUARY 1975

THIS APPLICATION FORM IS SUPPLIED GRATIS

26. STATE WHERE AND APPROXIMATELY WHEN YOU LAST APPLIED FOR A U.S. VISA

27. INDICATE WHETHER

☐ visa was granted ☐ visa was refused ☐ the application was abandoned

28. Have you ever been the beneficiary of an immigrant visa petition or indicated to a U.S. consular officer a desire to immigrate to the USA?

Yes ☐ No ☐

29. HOW LONG HAVE YOU LIVED IN THE COUNTRY WHERE YOU ARE APPLYING FOR A USA VISITOR VISA?

__________ Years __________ Months

30. PLEASE LIST THE COUNTRIES WHERE YOU HAVE LIVED FOR MORE THAN ONE YEAR DURING THE PAST FIVE YEARS

COUNTRIES	CITIES	APPROXIMATE DATES

31. TO WHICH ADDRESS DO YOU WISH YOUR VISA AND PASSPORT SENT?

32. IMPORTANT NOTE

(1) U.S. law prohibits the issuance of a visitor visa to persons who plan to remain in the United States indefinitely or who will accept employment there. A VISITOR MAY NOT WORK.

(2) A visa may not be issued to persons who are within specific categories defined by law as inadmissible to the United States (except when a waiver is obtained in advance). Complete information regarding these categories and whether any may be applicable to you can be obtained from this office. Generally, they include persons afflicted with contagious diseases (such as tuberculosis) or who have suffered serious mental illness; persons with criminal records involving offenses of certain kinds, including offenses against public morals; narcotic addicts or traffickers; persons who have sought to obtain a visa by means of misrepresentation or fraud; and persons who are or have been members of certain organizations, including communist organizations and those affiliated therewith.

DO ANY OF THE FOREGOING RESTRICTIONS APPLY TO YOU?

YES ☐ NO ☐

In the event any of the foregoing is applicable to you, or you have any question in this regard, personal appearance at this office is recommended. If that is not possible at this time, attach a statement of the facts in your case to this application.

I certify that I have read and understood the information set forth in the "IMPORTANT NOTE." I further certify that the answers I have furnished on this form are true and correct to the best of my knowledge and belief. I understand that possession of a visa does not entitle the bearer to enter the United States of America upon arrival at a port of entry if he or she is found inadmissible.

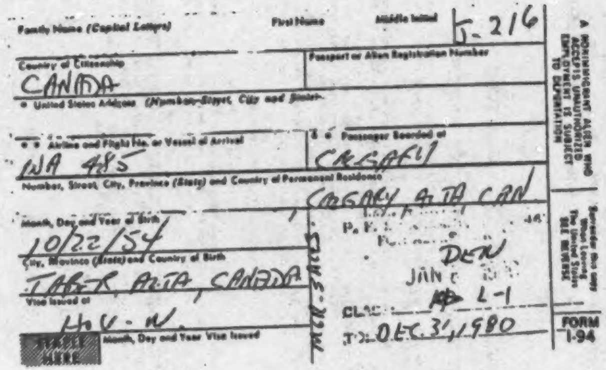
APPLICANT'S SIGNATURE

DATE OF APPLICATION *(Month - Day - Year)*

DO NOT WRITE IN THIS SPACE

—PHOTO—

ATTACHMENT 8



A NONIMMIGRANT ALIEN WHO ACCEPTS UNAUTHORIZED EMPLOYMENT IS SUBJECT TO DEPORTATION

Family Name (Capital Letters) First Name Middle Initial

J-216

Country of Citizenship: CANADA

Passport or Alien Registration Number:

• United States Address (Number-Street, City and State):

• • Airline and Flight No. or Vessel of Arrival: WA 485

• • Passenger Boarded at: CALGARY

Number, Street, City, Province (State) and Country of Permanent Residence: CALGARY ALTA CAN

Month, Day and Year of Birth: 10/22/54

City, Province (State) and Country of Birth: TABER, ALTA, CANADA

Visa Issued at: HOU-W.

Month, Day and Year Visa Issued

STAPLE HERE

NEW-SALES

P. F. [illegible] 46

P[illegible]

DEN

JAN [illegible]

L-1

CL[illegible]

T[illegible] DEC 31, 1980

Surrender this copy When Leaving The United States SEE REVERSE

FORM I-94

ATTACHMENT 9

EMBASSY OF THE
UNITED STATES OF AMERICA
Mexico City, Mexico

AUG 13 1981

5 August 1981

William R. Meyers, Executive Secretary
Virginia-Carolina Agricultural Producers Association, Inc.
P.O. Box 26
South Hill, Va. 23970

Dear Mr. Meyers:

This letter is to let you know of our appreciation for the interest your organization has taken in the visas issued to your Mexican workers, and to offer some suggestions for improving the process next season. The personal interest you have shown in the visa issuing process has been helpful, and we feel that with a few changes next season's visa issuance can be facilitated both for your organization and for the Visa Section here at the Embassy. The following are some procedures that will improve our service to your organization.

1. Have the Immigration and Naturalization Service in Washington, D.C. approve several large petitions for the various periods when you will need workers. Using this year's number of workers, have enough approvals on these large petitions to cover all the workers you will need next season. There are no problems with unused numbers, but searching for a few more numbers at the last minute from previous petitions is not easy.

The reason that it is difficult for us to review past petitions for unused numbers is that most of the petitions were relayed telephonically by INS. Telephoning down the information is meant to be used only in emergaency situations, and should be followed by a written copy of the petition. This summer we have received virtually all your petitions by telephone only, and without the actual petition here in Mexico record keeping becomes far more complicated.

2. This leads to a second point- please have INS forward the copy of the petition to us as soon as it is approved. This should be at least one month before the first group of workers plans to travel, to insure that the petition is received here before Mr. Trujillo applies for the visas.

3. When the approved petitions are here at the Embassy, please allow a minimum of five working days for the processing of the visas. The group visa procedure through the Office of Groups, Agencies, and Investigations is a special process so that the visa applicants are waived their personal appearance at the Embassy. Otherwise they are expected to appear at the Embassy and apply individually, causing more inconvenience for your organization and longer lines of applicants for the Visa Section. We assume that you would prefer to continue using the facilities of the group visa process, but must ask your cooperation with the five day rule.

Mr. Trujillo has been told that we require five working days to issue group visas each time he has represented you here for at least the last eight months, but has yet to comply with this requirement. We have been able to make an exception for your organization up until now, but with a continually rising workload this will no longer be possible.

4. In the future we will also request a list of the passports submitted in each group of visas that you request. We hope to avoid frauds such as the case of Jose Reza Pedraza, who apparently had two passports and was issued two H-2 visas.

If you have any questions about the visa issuing process, please direct your inquiries to the Office of Groups, Agencies, and Investigations, 553-3333, ext. 3356.

Thank you for your consideration. We in the Visa Section look forward to continuing to work with your organization.

Sincerely yours,

Gail A. Thompson

Gail A. Thompson
Groups, Agencies, and
Investigations Unit

Senator SIMPSON. Now, Ms. McCain, please.

STATEMENT OF MARGARET D. McCAIN, FARMWORKER UNIT, PINE TREE LEGAL ASSISTANCE, INC.

Ms. McCAIN. Mr. Chairman, I speak to you on behalf of several clients about a matter that is vital to their lives. That matter is the need for jobs. Men pursuing the logging business as choppers, log tractorskidder operators, or log truck drivers enter a lifetime occupation. They make major financial investments: Two or more chainsaws a year at an average $500 apiece, log skidders or log trucks at $30,000–$70,000, with payment schedules of 25 percent down and $1,000 to $2,000 a month payments. And what has been and continues to be the major problem: not enough work.

First, it is difficult getting a job, particularly if you do not supply your own equipment. Sometimes you have to refuse a job, not to avoid work, but because your cost will exceed the estimated income. And, if you ask for more than the Department of Labor's set wage, you are labeled "unavailable" and replaced by an H–2 worker.

Second, once you find a job, it is difficult to make ends meet. Inflationary costs, low wages, and production quotas are imposed because of the yearly surplus of wood and labor. And you cannot complain such as for having to repair the company's equipment for no pay or the lack of first-aid supplies, because jobs are too scarce to chance being labeled a "troublemaker."

Third, it is difficult to survive the long layoffs resulting not just from weather but from the oversupply of wood and labor. It is not just the worker but his family, his community, and the State that suffers. For example, last June in the combined lumber and woods products industry, over $600,000 was paid in unemployment benefits, over one-third of which was sent to Canadian claimants.

The individuals who come to me for help are hardworking, enterprising individuals. They do not want unemployment benefits, welfare, or food stamps. They want jobs: jobs that will allow them to make equipment payments, put food on their table, have family health insurance. They want job security, jobs that last the entire cutting season, and not be laid off due to excess wood and labor.

USE OF IMPORTED LABOR IN LOGGING INDUSTRY

It is in this environment of high unemployment, abbreviated work terms, and production quotas that ironically the H–2 system flourishes. The H–2 employers prefer imported labor not because they are anti-American or pro-Canadian but because it is the economically rationale choice.

Workers residing in Canada can afford lower U.S.-dollar wages because of such advantages as the 15–20 percent exchange rate, government health insurance, tax advantages, eligibility for both U.S. social security and Canadian pensions.

The problem is not one of availability. Rather, the problem is opening the borders to imported workers who are governed by a different economy, undermines the supply-demand principles of the national marketplace. It is a border problem. In fact, the economic advantage of the Canadian entering the U.S. market has now become so aggravated that it is starting to cause a displacement not just of labor but of U.S. products: potatoes, fish, grain, lumber. The very same woods industries that today asks you to continue the imported labor subsidy last week asked the Senate Finance Committee for protection from the adverse effect of Canadian lumber imports.

PROPOSED CHANGES IN THE H-2 PROGRAM

For me, the question before us today should be: How do we wean user industries of their dependency on this subsidy?

I offer a few suggestions: (1) restrict the use of imported labor to short-term agricultural employment; (2) disallow the use of foreign labor in jobs requiring the use of or maintenance of power-driven machinery; (3) require individual employers to hire at least two U.S. workers for each H-2 worker requested in a job category and gradually increase the domestic-to-foreign worker ratio over several years from 2 to 1 to 3 to 1 to 4 to 1 and so on; (4) require employers to supply each job applicant with a current job order; (5) require employers to hold well-advertised job marts in labor supply areas, including refugee camps; (6) disallow production minimums that are higher than the majority of domestic workers can achieve; (7) disallow supplemental employer petitions once the harvest commences; (8) require petitioning employers to pay a nonrefundable imported labor recruitment fee, say, $200 for each requested H-2 worker; (9) add a family housing requirement except where the job lasts less than 10 weeks; and (10) provide realistic administrative remedies and meaningful express private right of action that includes attorney's fees and double damages for intentional violations.

Senator **Simpson**. Thank you very much.

[The following was received for the record:]

PREPARED STATEMENT OF MARGARET D. MCCAIN

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify. I will focus my remarks on changes that should be made in the temporary alien labor program (commonly referred to as the "H-2" program). My written statement also includes examples of problems our clients have faced under the current H-2 program. These comments are based on our office's experiences representing several hundred woodsmen and apple pickers.

I.

PROPOSED MODIFICATION OF THE H-2 PROGRAM

A. Introduction

There can be only two types of Temporary Labor Programs. Either they encourage the use of domestic labor or they encourage the use of temporary foreign labor. The current H-2 program encourages the use of foreign labor, as does the proposed Guestworker Plan.

I oppose any Temporary Foreign Labor Program. However, in the name of my clients, and the nine million or more unemployed, I ask that if the use of imported labor is continued, the program be structured to encourage rather than discourage the employment of domestic labor.

What follows is a modification of the H-2 Temporary Foreign Labor Program. It is based on the principles that temporary foreign labor:

1. supplement, not supplant, domestic labor, and
2. be used only during short-term periods of high production in agriculture.

In this modified plan, provisions to deter the deplacement of domestic workers are both structural and enforcement based. For example: this plan limits the length of time temporary foreign workers are present in the United States, limits the category of eligible employment, and requires the hiring of domestic workers in order for an employer to obtain supplementary foreign labor.

This proposed modification of the H-2 program addresses the concerns expressed by Mexico and other supplier countries regarding general protections for workers: coverage under the Fair Labor Standards Act, a required work contract, and an express private right of action so as to encourage private sector monitoring of the program.

B. The Proposed Modification of the H-2 Program

The following provisions should be added to the existing temporary labor certification regulations:

1. A foreign worker would be eligible for admission:
    a. For a period not to exceed 24 weeks (or 168 calendar days) in any twelve month period; and
    b. Upon his posting of an entry bond ($25.00) at the time of entry, which shall be returned at the time of exit.

2. An employer would be eligible for H-2 certification only upon showing that:
    a. he is engaged in "agricultural" employment as defined in the Fair Labor Standards Act;
    b. the job offer is for short-term employment, limited to twenty-four weeks or less (168 calendar days or less);
    c. the job offer does not require the operation or maintenance of power driven machinery;
    d. he has already hired two (2) domestic workers for each foreign worker sought in that job category;
    e. he agrees to be subject to the provisions of the Fair Labor Standards Act regardless of whether he would be otherwise;
    f. the wages offered shall be no less than the adverse effect wage rate. The "adverse effect wage rate" shall be fixed based on the range of wages paid in the prior year by determining (1) the seventy-fifth highest percentile domestic wage rate paid for that activity, and (2) then as adjusted for inflation.

    The employer shall submit a signed copy of the work contract stating the wages and material terms of employment. The employer shall agree to provide job applicants with a copy of that job offer. For purposes of this provision, the term "employer" is defined synonymously with that definition set forth in the National Labor Relations Act.

3. The Department of Labor, in conjunction with the state employment services, would continue to administer the certification of employer petitions:

   a. no supplemental foreign worker petitions will be processed for the duration of that harvest;
   b. an imported worker recruitment fee ($25) is paid for each foreign worker requested. That fee is not refundable except to the extent the requested positions are denied;
   c. the employer has not been found in violation of the, H-2 provisions, or any other employment related laws, within the preceeding three years.

4. The Department of Labor should be given any additional authority required to implement these new provisions.

5. Any person aggrieved, including a displaced or otherwise adversely affected domestic worker, should have an express right to sue the H-2 employer. As well, provide attorneys fees and costs for successful claimants, and double damages where an intentional violation is established.

C. The Concerns Addressed By These Proposed Modifications

1. Those of the Mexican Government and Other Supplier Countries:

   a. provides for the welfare of its workers;
   b. discourages permanent immigration or long term absence of its prime workforce;

2. Those of Agriculture Employers:

   a. provides employers with supplemental labor in emergency situations;
   b. under straight-forward conditions;
   c. by allowing employers a relatively equal percentage of foreign workers, the inequities of some receiving all domestic versus foreign referrals will be alleviated. See, Elton Orchards, Inc. v. Brennan, 508 F.2d 493, 499 (1st Cir. 1974).

3. Those of Domestic Labor:

   a. reduces the short-term and long-term disincentives to recruit and employ domestic labor;
   b. reduces the structural problem of two groups with little or no political voice (imported and domestic farmworkers) from being placed in competition with one another for the same jobs.

D. THE DEPARTMENT OF LABOR'S ENFORCEMENT EFFORTS SHOULD BE INCREASED

The Administration has recognized the need for greater enforcement efforts by the Department of Labor, in particular those of the Employment Standards Administration and the Employment Training Administration. These increased enforcement efforts are recognized as needed to stem the tide of illegal immigration as well as deter the adverse effect of temporary imported labor.

Despite the agreed upon need for stepped-up enforcement measures, funding for the Employment Training Administration has been sharply reduced. For example, Region I Employment and Training Administration Office was formally staffed by 150 persons, is now down to 99, and is in the process of a further reduction of approximately 23 positions. Moreover, staff travel there has been restricted to authorized "emergencies." These budget cuts are contrary to the Administration's stated intent to increase DOL compliance actions. For the statutory provisions designed to deter displacement of domestic labor and curb the adverse effect on domestic wages and working conditions to be meaningful, the staff and general funding of the Employment Training Administration must be increased.

II.

EXAMPLES OF PROBLEMS UNDER THE CURRENT H-2 PROGRAM

A. General Problems Resulting From The Use Of Imported Labor In The Logging Industry

1. In occupations using imported labor, domestic workers have little or no bargaining power. If workers request any more than the set wages and conditions, they are rejected as legally "unavailable" and a foreign worker is recruited instead.

2. The number of H-2 visas present in an occupation is not a meaningful indication of the extent of displacement and adverse effect on similarly employed domestic workers. So long as imported workers are available to an employer -- regardless of whether he hires any -- the domestic worker must accept the employer's terms.

3. In rural areas of the nation, such as in Maine, where there is not a diversified economy, the effect of an imported labor program is particularly devastating. The worker has few options; either he accepts the depressed wages and working conditions and competes with the imported workers for jobs, or else, he must leave his community in search of employment elsewhere. The net result is that domestic labor can be asked to pay a higher and higher price to obtain employment. This is exemplified in the woods industry where, for example:

    a. the period of logging employment has been reduced well below the period during which operations are possible (this facilitates the use of alien labor and discourages domestic employment);

b. woodsworkers can be asked to either operate poor quality employer provided equipment (chainsaws and log tractor skidders) or alternately invest thousands of dollars in equipment in order to obtain a decent logging job;

c. woodsworkers are paid low piece rates. For example, since Spring 1980, the wage rate for tree length pulpwood has remained $9.15 per cord; as divided among a 2 or 3 man crew. (A "cord" is equal to 128 cubic feet of wood). For that sum, the trees are felled, limbed, topped, skidded to the loading yard, and bunched. In addition, the worker may be required to repair company equipment. or build a culvert or a logging road, for no additional pay. To boot, the employer may require the worker to cut all wood on a lot, yet compute his wages only on that portion that is deemed "merchantible".

d. despite the alleged shortage of labor, domestic workers are often put on production quotas because, ironically, there is an oversupply of wood;

e. there is little or no job security,pensions, or health benefits normally available to workers in career occupations. In contrast, woodsworkers in the Midwest and Northwestern states (where there is no imported labor) receive union wages of $15,000 - $18,000 for starting salaries, pensions and other benefits. This lack of job security and benefits is a disgrace in one of the most dangerous occupations. (During Maine's 1980-81 harvest season alone, at least twelve men died in woods employment related accidents.)

Whereas none of the above described poor working conditions maybe the direct result of the use of imported labor, they are directly attributable to the lack of bargaining power resulting from the expanded labor supply, and restrictions of the H-2 program.

4. The cost to the taxpayers where imported labor is used is enormous. Wages and working conditions are depressed. The cumulative impact of lost income on the state is substantial not to mention unemployment insurance payments to the imported workers. For example, in Maine a total of $4,020,185 was paid for unemployment benefits in the Lumber and Woods Products Industry from April through September 1980. Out of that sum, $1,419,572 was paid to Canadian claimants (temporary H-2 workers and commuter visas).

5. The crux of the matter is that woodsworkers from Canada, as with other H-2 workers, can afford to work for lower U.S. dollar wages. Likewise, they have available greater government benefits and subsidies than their U.S. counterparts; e.g., government subsidized health insurance, tax advantages, eligibility for both U.S. Social Security and Canadian pensions. These foreign workers however also find themselves in a double bind of desiring higher wages and decent working conditions, yet being deterred from raising problems out of fear of being fired, or in the long run, fear of being displaced by domestic workers who would be available under less depressed conditions.

6. Many Maine businesses complain about competition from Canadian producers, e.g. in the potato, fishing, and lumber industries. Ironically, some of the woods employers who complain about this adverse effect on the domestic lumber market are the same employers who are displacing domestic labor with cheaper imported workers.

7. Conclusion: If immediate steps are not taken to end the use of imported labor in the Northeastern woods industry, it will not be long before the career woodsworker becomes extinct, and exists only as an historical personality.

B. Specific Problems Under the Current H-2 Program

1. Example of Hiring Problem (woods):

Prior to 1980, when a job applicant applied for logging employment with an H-2 employer, the Maine State Job Service referred him to the employer's business office for an interview. Many H-2 woods employers working in Maine are based in Canada. Hence, to secure the job, applicants were often required to travel to Canada to meet with the prospective employer. Of those who did make this trek for the interview, many problems arose, such as no one there spoke English or the Employer was not to be found at the designated business office.

In late April, 1980, the Maine Woodsmen Association met with a member of Governor Joseph Brennan's staff to discuss the use of imported labor in the logging industry. They were concerned about the high unemployment rate among domestic woodsworkers, the oversupply of harvested wood, and low wages. They argued that supposedly imported labor cannot be employed if qualified U.S. workers are available or if there would be an adverse effect on domestic workers. They explained that the wages are so low now compared to work expenses, that many qualified workers are having to leave their communities in search of other employment. Others present at that meeting included a member of then Senator Edmund Muskie's staff, Regional Department of Labor (DOL) officials, and Maine Job Service representatives. One result of the meeting was that the Department of Labor agreed to hold "job marts" or "pooled interviews" at several locations around the state prior to the cutting season. All H-2 employers would be required to attend. This process would avoid the problems encountered by sending applicants individually to prospective employers.

The first such job mart was scheduled shortly after the "Governor's meeting". It was cancelled, however, a day or two before the scheduled date, because the contacted employers advised they still did not have final purchasing arrangements with their paper companies, land management companies, or mills. DOL responded by cancelling the job mart since without definite jobs to offer, these employers could not recruit, and therefore should not as yet be requesting imported labor.

As of May 5, 1980, the date of the originally scheduled job mart, one employer had commenced logging operations tions and was employing several H-2 foreign workers. Approximately twenty domestic workers were referred to an interview with that employer to be held the following day in Presque Isle. At the interview, the employer agreed to hire those interested, some to start the next day, and the remainder the following week. The employer said he had housing, as the regulations require, but not meals.

[The regulations require meals to be provided, 20 C.F.R. §655.202(b)(4), but DOL does not enforce that regulation.] The workers arrived the following day, along with their groceries, only to find uninhabitable housing (a boarded building occupied by birds, pipes unconnected, no heat and filthy). In addition, the employer was not prepared for them to start work. When the employer agreed to repair the housing the workers agreed to return the following Monday along with the other job applicants. These workers returned home, a round trip of about 240 miles. In the meantime, I was informed by DOL that the workers had quit on their first day and that DOL was not going to listen to the Maine Woodsmen's Association or Pine Tree Legal Assistance if these actions continued. I responded that there was no work, and no housing and to send an inspector to verify my report. DOL argued that there must be adequate housing because the housing was inspected and approved by the state. I repeated my request for an investigation.

The following Monday I accompanied the prospective workers to the job site. This time a state police officer arrived and ordered the workers off the property. The men explained they were hired to start work. The officer said there was no work for them. A job service inspector was also present to witness this. The workers then returned home jobless. It was later determined that the employer did not have the necessary housing. On his certification petition he had described the boarded up building as well as his daughter's home. DOL had approved the housing without the required precertification inspection.

2. Example of Hiring Problem (apples):

Pursuant to DOL regulations, 20 C.F.R. §655.202(b)(c), the H-2 employer must provide worker housing. In August, 1981, domestic workers applied to an orchard and were told they could work only if they arranged their own housing (the employer's was reserved for H-2 workers). DOL agreed to enforce the regulation but only so long as H-2 workers were not yet in transit to the place of employment.

3. Example of a Problem with the Department of Labor's Minimum Conditions of Employment (woods and apples):

Department of Labor Regulation 20 C.F.R. §655.202(b)(4) require that H-2 employers provide the worker with three meals a day. The provision of meals is of great significance to a woodsworker when the woods camp may be located 40 or more miles on logging roads from the nearest store. The employer is allowed to deduct a certain amount from the workers wages to cover, or partially cover, the expense. The Department of Labor does not enforce the meals requirement. In 1980, I wrote the Department of Labor inquiring whether this regulation would be enforced for H-2 logging employers. I had no response. The next I heard was that the Department of Labor had met with several apple employers or their representatives, and thereafter, had instituted emergency rulemaking to eliminate the meals requirement. I submitted comments that in effect would require meals to be provided in long term H-2 employment (e.g. woods, sugar cane) but exempt it for short-term employment (e.g. apples). The Department of Labor never issued a final regulation. The current rule remains, but continues to be unenforced.

4. **Revision of the Adverse Effect Wage Rate Methodology:**

In January of 1981, the Department of Labor after several years of extensive hearings, revised the adverse effect wage rate methodology. The revised methodology better effectuated the statutory policy of curbing the depressant effect on wages that naturally results by an expansion of the labor supply. Subsequently, under the Reagan administration, the revised regulation was scrapped in favor of the prior rule, which it was stated "impacts upon agricultural employers, in general, less than the rule being withdrawn". The justification given for this action was that DOL was engaged in a broad review of its policies regarding immigration. In fact that review was not being undertaken in light of existing law, but was based on the President's proposed revision of the immigration laws.

5. **The Effect of DOL's Fixed Wage Rates:**

Each year DOL publishes piece rate wages for woodswork and apple picking in Maine. In apples hourly Adverse Effect Wage Rates are also published. On several occasions during the past few years, these piece wage rates have not been issued in time for domestic recruitment. Therefore workers are recruited based on surveyed wages from two years earlier. Because availability is determined based on the DOL fixed criteria a domestic worker not willing to accept the antiquated wages was deemed legally "unavailable", and replaced with an H-2 worker.

The Department of Labor's fixed apple wage rates this year for Maine are absurd. The apple wages are set for both a legal bushel and an Eastern apple box (1 1/8 bushels). Yet, the wage for the 1 1/8 bushel box is lower than the wage for a 1 bushel box. For example, the spot picking rate for 1981 was 47 cents per 1 1/8 bushel box (an Eastern apple box), and 55 cents per 1 bushel box. See also the attached letter of August, 1979 from the Maine Department of Manpower Affairs describing the probable restraint on free market principles resulting from the use of alien labor in the apple industry. Exhibit #1.

Moreover, by instituting high piece rate production minimums, employers have been able to eliminate most domestic workers who would otherwise be "available". These production minimums are artifically based on the adverse effect wage rate. By holding the piece rates low and the production minimums high, employers can undermine the purpose of the hourly Adverse Effect Wage Rates.

6. **Examples of Enforcement Problems under the H-2 Program**

   a. The Employment and Training Administration and the State Employment Services receive insufficient funding to provide the enforcement remedies promulgated by the Department of Labor. In Maine, for example:

      i. There are no available funds to pay someone to investigate worker complaints under the Wagner Peyser or H-2 regulations. Therefore the housing inspector is given this additional responsibility. As a result of wearing these two conflicting "hats", the inspector-investigator must investigate housing violations on housing he previously approved. In one instance he testified at a job service hearing that certain housing conditions were proper as he had approved them. The employer, on the other hand, admitted the housing conditions were in fact as stated by the complainant.

ii. In Maine, there are no funds to hire state job service hearing officers for Wagner Peyser and H-2 cases. Therefore the unemployment benefits hearing officers must take on this additional responsibility. As a result, hearings may not be held for many months after the complaint was filed, and the decisions not issued until months thereafter.

b. The state and federal administrative remedies under the H-2 program are convoluted and prolonged. It may be several years before a complainant could reach the level of review by a Department of Labor Hearing Officer. In contrast, if an employer is denied any of his requested H-2 foreign workers, he has the right to request an expedited appeal to a Department of Labor Hearing Officer. The Hearing Officer then has five days in which to issue his written decision.

c. If DOL denies the H-2 petition of any employer, that denial is not binding on the Immigration and Naturalization Services. The Immigration and Naturalization Services is authorized to accept additional countervailing evidence from the employer and may decide to allow the entry of foreign workers despite the DOL recommendation to the contrary.

d. The H-2 regulations (20 C.F.R. §655.208) provide for revocation of H-2 labor certifications which have been found to contain willful misrepresentations. This is the only basis upon which an H-2 labor certification once granted can be revoked. INS however, has indicated an unwillingness to invoke this remedy, even where documentary evidence is provided.

C. Conclusion

In conclusion, the temporary alien labor certification program should be revised so as to provide incentives for the employment of domestic labor. Enforcement measures should not be and cannot realistically be, relied on to deter the displacement on domestic labor.

III.

THE GUESTWORKER PLAN AND ITS RELATIONSHIP TO THE H-2 PROGRAM

A. The Guestworker Plan Should Be Rejected

The guestworker plan is offered as a partial antidote to illegal immigration. In effect, it will be another program to ensure a constant supply of cheap docile foreign labor for agribusiness and other interested industries.

1. Even if the numerical ceiling were as high as 500,000 Guestworker slots, this would absorb very little of the estimated million plus annual illegal entrants;

2. The Guestworker slots might be filled with some who would otherwise be "illegals", but not necessarily;

3. Guestworker programs as well as any other legal immigration proposal have notoriously had the "magnet" effect of attracting increasingly more legal and illegal migrants.

4. The Guestworker Plan would not return more control to the State in determining the number of temporary worker slots needed:

   One the justifications proferred for the Guestworker Plan is that it gives the states control over determining the number of foreign workers needed. However, states now certify the number of H-2 foreign workers to be alloted each petitioning employer. The number certified by the state is forwarded to the Department of Labor's Certifying Officer, who, absent any error evident on the face of petition, grants the number specified by the state's Certifying Officer.

B. Simultaneous Operation Of A Temporary Labor Certification Act And A Guestworker Act Is Fiscally Irresponsible:

A reason given for the simultaneous operation of the Guestworker and the Labor Certification Program is that it would allow the Administration to compare and contrast the economic impact of the Guestworker Plan, as well as assess its feasibility as a limited regulation program. Simultaneously instituting these two plans to be run by separate agencies so as to have the luxury of comparing the effect of different methods of operation would be a slap in the face to the American public who are at the same time facing 8% general unemployment, 16.6% farmworker unemployment, and cutbacks in all social programs from school lunches to social security.

C. The Co-existence Of The Two Programs Will Have Questionable Benefit To Participating Employers.

Employers may very likely find themselves in the vexing position of choosing which program might be the most economical and most likely to assure them a supply of high quality dependable imported worker. Likewise, employers participating in one or the other program may find themselves at odds with those participating in the other plan.

IV.

THE COMMUTER VISA PRACTICE: ANOTHER IMPORTED LABOR PROGRAM

A. Background

Imported labor is now used in this country in the form of temporary "H-2" workers and as commuter visas. "H-2" workers are "non-immigrant" workers from foreign countries who enter this country to perform temporary employment. Commuter visas are immigrants from Mexico and Canada who have U.S. permanent resident visas, but who reside in their homeland and use the resident visa as a U.S. work permit.

There are currently about 60,000 Mexican and 10,000 Canadian commuter visas. Commuter visas are in theory part of the "domestic" labor force because they hold permanent U.S. resident visas. These border crossing workers can work for lower U.S. dollar wages than domestic workers can afford. Like the foreign workers who enter as temporary labor under th H-2 program, the commuter visas benefit from the U.S. dollar exchange rates and access to both U.S. and foreign government benefits. The adverse effect of the commuter visas' labor pool on domestic workers is, however, even more invidious than that of the H-2 workers. Under the current H-2 temporary worker program, criteria employers (those requesting H-2 foreign labor) must, at least in theory, recruit U.S. workers in preference to non-resident workers. On the other hand, employers may select commuter visas in preference to local resident workers with impunity. That preferential selection of the commuters is exactly what transpires.

The Immigration and Nationality Act, 8 U.S.C. §1101 et seq., does not provide for this "one-foot-on-either-side-of-the-border" status. Pursuant to administrative artifice, commuters are classified as immigrants "lawfully admitted for permanent residence", who are "returning from a temporary visit abroad". Accordingly, the commuter's place of employment in the U.S. is treated as if it were his residence, and the commuter's return to his home in Mexico or Canada is treated as "a temporary visit abroad". In Saxbe v. Bustos, 419 U.S. 64 (1974), the Supreme Court upheld the legitimacy of the commuter status, primarily on the ground that given that this status was an administrative practice of long standing, elimination thereof, is the responsibility of Congress, not the Courts.

B. The "Commuter Visa" Status Should be Abolished

The Immigration and Nationality Act should be amended as follows:

1. Immigrants entering this country as permanent residents, should be required to take up residence in the United States. Employment in the United States would not be treated as satisfying the residency requirement.
2. Persons who obtained "commuter visa status" prior to January 1, 1980, would be permitted to maintain that status on the condition that:
    a. Every six months, the commuter visa submit documentation to the Immigration and Naturalization Service establishing that he has maintained employment in the U.S. for nine out of the past twelve months.

    b. If an alien commuter has been out of employment for three or more months during the preceding year, he shall be deemed to have lost his status as an alien lawfully admitted for permanent residence (unless, he in fact takes up residence in the U.S. within the following six month period).

    c. An alien commuter cannot satisfy the residence requirements of the naturalization laws and cannot qualify for any benefits under the immigration laws on his own behalf or on behalf of his relatives. For example, the commuter cannot petition for the entry of his relatives, on the grounds of his having U.S. permanent resident status.

d. When an alien commuter takes up residence in the United States, he shall no longer be regarded as a commuter, and is no longer eligible to renew that status.

3. Persons who obtained commuter visa status after January 1, 1980, be granted 12 months to establish residence in the U.S. In the event that "permanent residence status" is not perfected, the visa of an alien lawfully admitted for permanent residence would not be renewed.

EXHIBIT #1

JOSEPH E. BRENNAN
GOVERNOR

DAVID W. BUSTIN
COMMISSIONER

STATE OF MAINE
DEPARTMENT OF MANPOWER AFFAIRS
POST OFFICE BOX 309
20 UNION STREET
AUGUSTA, MAINE 04330

August 29, 1979

Timothy M. Barnicle, Regional Administrator
U.S. Department of Labor
Employment and Training Administration
Room 1707, John F. Kennedy Federal Building
Boston, Massachusetts 02203

Dear Mr. Barnicle:

Please find enclosed the 1978 apple picking wage survey responses outlined by (1) establishment, unit, and activity; (2) unit, activity, and type of worker; and (3) by prevailing rate referenced to the type of worker, establishment hiring pattern, unit and activity. A list of establishments employing only domestic pickers and refusing to participate in the survey is also enclosed.

The analyses listed above appear to identify a light representation of domestic workers in responses reflecting certain activities and units. Investigation of the universe list of employing establishments and the comments on the survey documents reveals that orchards with only domestic workers are generally not as disposed to participating in the survey. It has been alleged that establishments not using bonded apple pickers have actually been discouraged from responding to the survey by other interested parties. A requirement for a good survey is the cooperation of employers employing domestics, and thus a statistically valid sample of domestic workers by unit and activity. This was not always the case in 1978 and we are concerned about the survey to start at the end of this September.

Another observation from the enclosed outline is the probable restraint on the free market mechanism for domestic wages as a result of bonded workers and/or non-representative U.S. Department of Labor wage settings. When the wage rates of domestic workers from orchards with no bonded workers are compared with the rates of those domestic workers in orchards where there are bonds, higher rates favor workers in orchards without bonded workers. The "legal bushel-strip picking" for example was the unit and activity in 1978 with the largest number of domestics and appears to be the most representative of a free market equilibrium wage.

The problems highlighted above seem to call for the U.S. Department of Labor to seriously review the methodologies and procedures prescribed for the Domestic Agricultural In-Season wage report. We believe that it would be extremely beneficial if a person from your office or the national office could be fully dedicated to the 1979 apple picking wage survey and work along with my staff and the enumerators assigned.

Other critical aspects relative to the survey are (1) the adverse employer reactions to our involvement and (2) the inadequate funding of this Agency by the U.S. Employment and Training Administration for this activity. There are no Labor Market Information funds allocated on the basis of this extra workload nor are there sufficient funds available to Job Service through alien labor certification. This situation requires a redirection of line staff from regular Job Service and Labor Market Information program budgeted plans.

May we hear from you on these matters.

Very truly yours,
David W. Bustin
Commissioner

MAINE DEPARTMENT OF MANPOWER AFFAIRS
Manpower Research Division

DISTRIBUTION OF WORKERS AND PREVAILING RATES PAID FOR APPLE PICKING BY UNIT, ACTIVITY, AND ESTABLISHMENTS IDENTIFIED BY TYPE OF HIRING PATTERN IN MAINE ORCHARDS DURING THE FALL OF 1978 1/

Unit and Activity	Prevailing Rates by Establishments Identified by Type of Hiring Pattern								All Establishments and Workers 3/		Rates as Reported in ES-232's for All Domestics 4/	
	Domestic Workers in Orchards				Bonded Workers in Orchards 2/							
	With Bonded Workers		Without Bonded Workers		With Domestic Workers		Without Domestic Workers					
	Rate 5/	Number of Workers	Rate 5/	Number of Workers	Rate 5/	Number of Workers	Rate 5/	Number of Workers	Rate 5/	Number of Workers	Rate 5/	Number of Workers
Legal Bushel 6/												
Strip Picking	$.40	59	$.45+$.25	133	$.40	68	$.41	56	[illegible]	316	$.46	113
Spot Picking	.37+$.25	31	.40+ .05	26	.37+$.05	75	.42	10	.37+ .05	142	.43+$.25	97
Standard Apple Box 7/												
Strip Picking	.425	106	.40+ .05	98	.475	119	.41	9	.405	332	.495	194
Spot Picking	.43+ .05	57	.473	27	.43+ .05	106	.43+$.05	10	.43+ .05	200	.43+ .[illegible]	84

1/ Ten orchard owners refused to participate in the apple picking wage survey. As a result, an estimated 232 domestic workers are not represented in these numbers. The nonparticipating orchards who employed this estimated number of domestic apple pickers did not employ any bonded workers.
2/ Includes 37 Canadians and 410 British West Indians.
3/ Includes all workers (bonds and domestics) and orchards combined.
4/ Prevailing Rates as submitted to U.S. Department of Labor, November 2, 1978, as per instructions in the Employment Security Manual.
5/ Represents a base rate and, when indicated, an end-of-season bonus.
6/ Defined as 2,150.42 cubic inches.
7/ Defined as 2,431 cubic inches or a container 17" x 13" x 11".

August 1979

MAINE DEPARTMENT OF MANPOWER AFFAIRS
Manpower Research Division

Table I

DISTRIBUTION OF WORKERS AND PREVAILING RATES PAID FOR APPLE PICKING BY UNIT, ACTIVITY, AND ESTABLISHMENTS
IDENTIFIED BY TYPE OF HIRING PATTERN IN MAINE ORCHARDS DURING THE FALL OF 1979 1/

Unit and Activity	Prevailing Rates by Establishments Identified by Type of Hiring Pattern								All Establishments and Workers 3/		Rates as Reported in ES-232's for All Domestics 4/	
	Domestic Workers in Orchards				Bonded Workers in Orchards 2/							
	With Bonded Workers		Without Bonded Workers		With Domestic Workers		Without Domestic Workers					
	Rate 5/	Number of Workers	Rate 5/	Number of Workers	Rate 5/	Number of Workers	Rate 5/	Number of Workers	Rate 5/	Number of Workers	Rate 5/	Number of Workers
Legal Bushel 6/												
Strip Picking..........................	$.40	12	$.50	182	$.45	29	$.37	8	$.50	220	$.50	194
Spot Picking..........................	.45	21	.43&.05	77	.45	96	.45	18	.45	212	.40&.10	98
Standard Apple Box 7/												
Strip Picking..........................	.45	56	.45&.05	247	.42	113	.42	80	.45	496	.40&.10	303
Spot Picking..........................	.42	28	.60	27	.42	47	.42&.05 and .44	24	.46	124	.47&.05	53

1/ Four orchard owners refused to participate in the apple picking wage survey. As a result, an estimated 80 domestic workers are not represented in these numbers. The nonparticipating orchards who employed this estimated number of domestic apple pickers did not employ bonded workers.
2/ Includes 24 Canadians and 390 British West Indians.
3/ Includes all workers (bonds and domestics) and orchards combined.
4/ Prevailing Rates as submitted to U.S. Department of Labor per instructions in the Employment Security Manual.
5/ Represents a base rate and, when indicated, an end-of-season bonus.
6/ Defined as 2,150.42 cubic inches.
7/ Defined as 2,431 cubic inches or a container 17" x 13" x 11".

Senator SIMPSON. Mr. Williams.

STATEMENT OF ROB WILLIAMS, ATTORNEY, FLORIDA RURAL LEGAL SERVICES, INC.

Mr. WILLIAMS. Mr. Chairman, my name is Rob Williams. I am an attorney with Florida Rural Legal Services, located in Immokalee, Fla. I wish to address my remarks today to the question of whether government supervision of the H–2 program guarantees compliance with the laws designed to protect farmworkers' wages and working conditions.

Proponents of the H–2 program have frequently asserted that the conversion of the present illegal immigration into an H–2 program will assure the alien workers receive the protection of the laws which is presently denied them because of their illegal status. The experience with H–2 workers in sugar cane shows otherwise. The many regulations which in theory are supposed to protect both the H–2 workers and the domestic workers are disregarded in practice.

I have included with my testimony a picture of H–2 sugar cane cutters being led away to jail after they protested their working conditions in 1968. Fifty-two were arrested. Another 100 were deported in one day. The protest grew out of a dispute over the row price for cutting cane. I mention this incident because 13 years later the method by which the row price is set in sugar is still a mystery to everyone except the sugar companies themselves.

[The photograph submitted by Mr. Williams follows:]

Mr. **Williams**. Of course, the Department of Labor's regulations are quite explicit: the piece rate must be disclosed; the unit of production should be clearly defined by weight and/or size. The definition of the piece rate is important not just because workers are interested in knowing how they are paid, but also because the piece or task rate is part of a productivity standard which the employee must meet or face termination.

A worker who cannot complete his assigned task in such time as to allow him to earn the adverse-effect rate is terminated. Obviously, if the task rate is set low, it will be difficult to earn the adverse-effect rate. Since hundreds of domestic workers were fired last year because of their supposed failure to meet productivity standards, it is clearly important that the worker have some objective basis for determining whether the setting of the task rate is fair.

Even when paid on a piecework basis, workers are required to be paid the adverse-effect wage for hours worked. However, that guarantee may be also illusory. In 1973 the Department of Labor conducted a review of wages of H-2 workers at the four largest sugar cane producers. At the largest producer, the U.S. Sugar Co., the company's timekeeping practices resulted in an average underreporting of 1½ hours of working time per day.

The Secretary of Labor concluded in 1977 that no action was warranted because it was too late to take any effective action regarding the 1973-74 season.

The secretary also noted that there were no complaints regarding the 1973-74 harvest season. This also is not surprising, given the sugar companies' policies designed to keep all complaints inhouse.

American workers may complain to U.S. Department of Labor Monitor Advocates.

The FFVA urges its members to cooperate with the monitor advocate system as an alternative to the workers obtaining information in some other way, such as from migrant legal services representatives. Posted on bulletin boards at all the barracks for H-2 workers are signs warning that Florida rural legal services is not the friend of the West Indian worker.

The FFVA further advises that growers should make use of the DOL representatives when they have problems with workers the same way they use the British West Indies liaison officers. When a grower is having problems with nonproductivity or unruliness, they can request the monitor advocate assist in correcting the situation and when growers want to get rid of American workers so as to replace them with H-2 workers they are encouraged to make full use of DOL personnel to document their case.

H-2 workers supposedly can take their complaints to a British West Indies liaison officer. The British West Indies central labor organization administers the H-2 program for the participating foreign governments, so it is not a true labor organization. It is an organization with the representatives of the various governments. It has such a vested interest in the H-2 program that it cannot or will not vigorously enforce the H-2 workers' rights.

Workers who persist in their complaints run the risk of being barred from ever returning to the United States by being blacklisted. We have learned by sad experience that we cannot protect our West Indian clients from such retaliation.

The problem of protecting H-2 workers from abuse is inherent in the system. The Department of Labor does a very poor job of protecting American farmworkers from exploitation and abuse. The problem is compounded, not simplified, when the workers are aliens or aliens are only present in our country for a short time and are required to work for only one master.

As Justice Jackson said a long time ago, "In general, the defense against oppressive hours, pay, poor working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligations to go on, there is no power below the redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work."

The H-2 worker is dependent upon his employer for his right to remain in this country. I think the history of the sugar cane industry shows that the rights of H-2 workers cannot be protected. If our concern is for the worker, both foreign and domestic, the H-2 program should be eliminated, not expanded.

Senator SIMPSON. Thank you very much.

Mr. Semler, please.

STATEMENT OF MICHAEL SEMLER, ATTORNEY, MIGRANT LEGAL ACTION PROGRAM, INC.

Mr. SEMLER. Thank you, Mr. Chairman. I am Michael Semler. I am an attorney with the migrant legal action program. Our organization has been representing farmworkers in connection with the H-2 program for more than 6 years.

Because this program has never served its stated purpose much less contributed to the control of illegal immigration, we believe that the use of H-2 workers in agriculture should be terminated. If the H-2 program is continued, major revision is required.

This morning I would like to recommend five such revisions. However, I would first like to return to the question of the motivation of the agricultural employer seeking H-2 workers. This subject has recently been clouded by a number of employer claims.

Two tax provisions provide financial incentives in the use of H-2 workers: The agricultural H-2 user is not subject to the 6.65 percent social security tax. In at least 30 States, the H-2 employers can also avoid the 3 to 5 percent unemployment insurance tax. Thus, some farm employers can receive a tax windfall of over 10 percent of the wages by using alien workers.

The Florida sugar cane producers acknowledge a tax savings of $474 per worker, which amounts to over $4 million for their H-2 workforce. I estimate that the applegrowers in the Northeast realize a savings of over $750,000 each year in social security taxes alone.

Growers have argued that these tax savings are offset by special costs associated with the H-2 program. However, the real issue is whether the benefits required under the H-2 program are above those required by the market. What would these employers be required to pay if they did not use H-2 workers?

I have attempted to answer this question for the Hudson Valley in New York, where just over 50 percent of the apple producers use H–2's. Data generated by the New York State Employment Service shows the following:

First, during the last four seasons, H–2 users in the Hudson Valley have paid lower wages than their neighbors who did not use H–2's.

Second, H–2 employers in the Hudson Valley incurred no greater housing costs than they would if recruiting outside the H–2 program. ninety-seven percent of the Hudson Valley employers who recruited domestic interstate workers provided free housing.

Third, the Hudson Valley H–2 growers incurred no special meal costs. Even if the grower provides meals, which he is not required to do, he may charge the actual cost of the meal up to $4 per day. Non-H–2 growers in this area provide meals on similar terms.

Finally, the contracts signed by the Hudson Valley employers with the Jamaican Government make no provision for employer payment into a foreign social security fund. However, under this contract, 3 percent of the worker's wages is deducted for insurance. An additional 23 percent is held by the Jamaican Government to cover certain costs, including certain costs incurred by the employer.

Thus, the social security savings realized by the Hudson Valley growers are not offset by any special cost. To the contrary, H–2 users in this area pay lower wages than nonusers and realize additional financial benefits.

If the H–2 program is continued, these incentives must be eliminated and the Department of Labor certification process strengthened.

I urge this subcommittee to support the following five changes in the H–2 program:

First, the social security tax provision should be amended to delete the exemption for wages paid foreign workers. These payments should be gathered in a special fund and paid to the workers as they return to their homeland.

Second, Congress should eliminate the H–2 exemption from the unemployment insurance tax. The Select Commission, the National Commission on Unemployment Compensation, and the Reagan administration have all recommended that this exemption not be continued.

Third, the H–2 program should provide for Federal control of the recruitment, hiring, and transportation of foreign workers. This should be done pursuant to formal government-to-government agreements, with the H–2 employer paying the cost.

Fourth, the Department of Labor should retain and improve the adverse-effect wage rate. To dramatically expand the labor supply in the local market obviously depresses wages. The Department of Labor's adverse-effect wage rate attempts to prevent this depression, and it is absolutely essential. However, the adverse-effect wage rate should be based on wages paid in the area by those employers at the top of the local wage scale. These figures can then be adjusted upward in relation to the degree of H–2 penetration.

Finally, the regulations should be revised to provide that domestic recruitment begins earlier. To streamline the certification process by limiting interstate recruitment is exactly the wrong solution to the current delays. The job orders should be submitted at least 6 months in advance, with the Department of Labor insuring that these orders are available in the local employment service offices while U.S. migrants can still be reached.

I believe that these five changes would significantly improve the protection provided U.S. workers under the H-2 program.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, Mr. Semler.

[The prepared statement of Mr. Semler follows:]

PREPARED STATEMENT OF MICHAEL SEMLER

Mr. Chairman, I am Michael Semler, an attorney with the Migrant Legal Action Program. We are a non-profit law firm representing indigent migrant and seasonal farmworkers. Our fundamental goal is improvement of the employment conditions of one of our nation's most abused working groups.

I have been representing migrant workers in connection with the H-2 program for four years. This experience has convinced me that the H-2 program is one of the major obstacles to improving the wages and working conditions for farmworkers in those areas where it is used.

In testimony before this subcommittee on May 6, 1981, I outlined several major problems with the operation of the H-2 program in agriculture. This morning I would like to comment on possible revisions in the H-2 program. However, before discussing these revisions I would like to return to the fundamental question of the motivation of the agricultural employer in seeking H-2 workers. No revision of the H-2 program can be effective unless it is based in an understanding of the existing financial incentives encouraging the use of H-2's and the failure of DOL's certification system, including the "adverse effect wage rate", to offset these incentives. This subject has recently been clouded by a number of employer claims, especially concerning the tax savings available to H-2 users and special "offsetting" costs, which must be considered in some detail.

I. Financial Incentives

A. Estimated FICA and FUTA Savings

There are a number of reasons why certain agricultural employers prefer foreign workers and several of these reasons are wholly unrelated to the tax system, e.g., the ease with which the foreign workers can be recruited, the homogeneity of the H-2 workforce, the employer's control over the selection process, the visa provisions binding the H-2 worker to the employer, and the exclusion of foreign recruitment from the Farm Labor Contractor Registration Act. However, two special exemptions in the tax code provide the starkest rewards for using H-2 rather than U.S. workers in agriculture.

The Federal Insurance Contributions Act (FICA) excludes labor performed by "foreign agricultural workers" from the applicable definition of "employment". As a result, the agricultural employer of H-2's is not subject to the 6.65% social security tax.

The Unemployment Compensation Amendments of 1976 extended unemployment coverage to large agricultural employers. However, a temporary exclusion was provided for wages paid to alien workers admitted under the H-2 program. In 1979 this exclusion was extended until the end of 1981. Because of this exclusion agricultural employers in at least thirty states, including the major H-2 states of Virginia, West Virginia, and Florida, can avoid the unemployment insurance (FUTA) tax altogether, saving approximately 3 to 5 percent of their field labor payroll.

Some employers can thus receive a joint FICA and FUTA windfall of over 10% of their payroll by switching to alien workers.

One of the important flaws of the H-2 program is that the employers are not required to show any financial need in order to obtain an H-2 worker "subsidy." This means that no one but the employers know the exact size of their payroll and of the FICA and FUTA savings. However, it is clear that these exemptions can produce large tax "bonuses". The following chart provides a rough estimate of the FICA and FUTA savings in three crops:

Northeast Apples

FICA:	$125	per worker, assuming an 8 week season at $4.89 per hour, 48 hours per week.
	$763,330	total FICA savings for H-2 apple growers based on 6,113 H-2's certified for 10 states in 1980.

FUTA:	$56	The FUTA rate varies by state and employer, but a savings of $56 per worker would be realized at a 3 percent tax rate (assuming the wage rate and season noted above) in those states which exclude H-2 wages.

Virginia Tobacco

Assuming a 3 percent FUTA tax rate, the Virginia tobacco growers each year realize an estimated total FICA and FUTA savings of:

$260	per worker, assuming a four-month season at $3.51 per hour, 48 hours per week.
$182,000	total savings, based on 700 H-2 workers in 1980.

Florida Sugarcane

In written testimony submitted to the House immigration subcommittee on October 14, 1981, George Sorn of the Florida Fruit and Vegetable Association stated that the Florida sugarcane companies realized FICA/FUTA savings of $474 per worker during the 1980-81 season. This amounts to an annual tax savings of:

$4,029,000	total FICA and FUTA savings based on 8,500 H-2 workers.

Tax savings of this magnitude give individual growers and their industries a tremendous incentive to use foreign labor.

B. Grower Claims of "Offsetting Costs"

Growers using H-2 workers often argue that these tax savings do not cause employers to favor H-2 workers because the savings are offset by "special costs" associated with the H-2 program. An employer seeking H-2 certification is required by law to provide certain benefits (to both U.S. and foreign workers) not usually required by law of those not seeking H-2 certification. However, the only question of economic significance is whether the benefits required under the H-2 program are above those required of non-H-2 employers by the forces of the market. The real issue here is: What would these employers be required to pay for labor if they did not use the H-2 program?

This question can only be answered by a detailed analysis of the wages and working conditions offered by other employers in the same market. I have attempted to make this analysis for a single apple growing area, the Hudson Valley in eastern New York, where approximately one-half of the workforce (56 percent) is composed of H-2 workers. As shown below, use of the H-2 program by Hudson Valley growers rarely imposes transportation, housing, food, or other costs which these growers would not otherwise be required to pay. Moreover, rather than paying higher wages, the H-2 users consistently offer lower wages than their immediate neighbors who do not use H-2 workers.

1. Wage Rates

a. H-2 Users Pay Lower Wages Than Non-Users: The Department of Labor is authorized to certify the need for foreign labor only where the admission of H-2 workers "will not adversely affect the wages and working conditions of workers in the United States similarly employed." 8C.F.R. §214.2(h)(3). This seems to require that the H-2 employers offer wages at least as high as are being offered by non-H-2 users in the same area. Nevertheless, the employment service's own wage surveys show that just the opposite is true in the Hudson Valley.

Each fall the Job Services Division of the New York State Department of Labor conducts a survey to determine the actual piece rate wages being paid in the apple growing regions of the state. This information is compiled, analyzed, and reported to DOL in the Domestic Agricultural In-Season Wage Report. The primary puspose of this report is to determine the "prevailing wage rate" among domestic apple workers in the various regions. The Wage Report for the Hudson Valley breaks this information down further, comparing the piece rates paid to U.S. workers employed by growers also using H-2 workers ("Users") with the piece rates paid to U.S. workers employed by growers not using H-2 workers ("Non-users"). The following chart shows the prevailing wage paid by these two groups for the period 1977 through 1980:

	1977	1978	1979	1980
Users of H-2 workers	$.38	$.38	$.40	$.43
Non-users:	$.40	$.42	$.45	$.46

For at least the last four years the prevailing wage among H-2 users in the Hudson Valley has been below that paid by growers in the same area who do not use H-2 workers. During this period H-2 users have paid from 5% (1977) to 11% (1979) less than their non-user neighbors. For these H-2 employers, the H-2 wage provisions do not offset the FICA tax savings (New York State requires payment of FUTA taxes on H-2 wages), but add another major incentive to use H-2 workers.

b. Wages in the Hudson Valley are Lower Than in Other Parts of New York Where Fewer H-2's Are Used: H-2 users dominate the Hudson Valley apple market in terms of both employers (51 percent of the employers use H-2's) and the number of workers employed (67 percent of the domestic workers are employed by growers who also use H-2's). As a result, the wage paid by these growers determines the overall "prevailing wage". Because the wage paid by the H-2 users is below that paid by the non-users, the overall prevailing wage is depressed. For example, DOL's official overall prevailing wage rate for this area in 1980 was $0.43, although rates among non-users were often much higher (in some cases, $0.60 per box).

This wage depression can be further illustrated by comparison of the overall prevailing wage rates in the Hudson Valley with those in the two other areas in New York where H-2's are used. In both of these areas - the Champlain Valley in upstate New York and in a five-county region in western New York - the H-2 workers constitute a small percentage of the workforce. As shown below, the overall prevailing wage rate is consistently higher in these two areas:

	1977	1978	1979	1980
Hudson Valley	0.38	0.38	0.40	0.43
Champlain Valley	0.45	0.45	0.45	0.50
Western New York	0.43	0.45	0.46	0.50

Thus, the overall prevailing rate in the Hudson Valley is significantly lower than in areas where fewer H-2's are used.

c. Wages Paid by H-2 Users Do Not Increase at the Same Rate as the AEWR: Because H-2 users dominate the Hudson Valley market, absent further intervention by DOL they could block any increase in the prevailing wage from year to year by agreeing among themselves not to offer any more than was offered the preceding season. DOL's "adverse effect wage rat" (AEWR) is intended to prevent this by each year increasing the minimum wage which H-2 users can offer. However, the AEWR is set on an hourly basis, while apple pickers are paid on a piece-rate basis. Although regulations provide that increases in the AEWR must be translated into corresponding increases in piece rates, this has not been enforced. As a result, H-2 users have increased their piece rates much more slowly than the AEWR has increased, depressing the wages even further.

The following chart show the change in the AEWR's for New York and the prevailing piece rates in the Hudson Valley from 1977 to 1980:

	1977	1980	% Increase
AEWR :	$2.70	$3.18	17%
Piece Rate :	$0.38	$0.43	13%

During this four-year period, the AEWR increased 17%, but the piece rate paid by the Hudson Valley H-2 users increased only 13%. Clearly, DOL is doing very little to ensure that the AEWR has a real impact on the actual wage rate.

Even more telling is the disparity between the increase in the AEWR and the actual earning of U.S. workers in the Hudson Valley during this period. The average hourly earnings of U.S. workers surveyed during the peak week of the harvest were as follows:

	1977	1980	% Increase
Average Hourly Earnings:	$4.76	$4.89	2%

Thus, the 17 percent increase in the AEWR for New York between 1977 and 1980 meant only a 2 percent increase in the actual earnings of U.S. workers in the Hudson Valley.

2. Housing

The H-2 users often argue also that the FICA and FUTA tax savings are offset by the fact that the H-2 regulations require that free housing be providing. This claim is similarly without substance for the Hudson Valley employers, for the growers would incur this cost even if recruiting outside the H-2 program. The abovementioned Wage Report for 1980 states that "97 percent of those employers who employed interstate workers" (H-2 workers are not counted as interstate workers) in the Hudson Valley provided "free housing." Moreover, regulations of the U.S. Employment Service now provide that growers using the employment service must assure that "no cost or public housing" will be provided by the employer. 20 C.F.R. §663.501 (3)(2)(xv) and (3). Thus, the H-2 growers experience no increased cost in this area because of the H-2 regulations, for they would have to provide free housing even if they did not use the H-2 program.

3. Transportation

Defenders of the H-2 program also argue that their tax savings are offset by the requirement that they pay for transportation to the worksite (payment must be made after 50 percent of the contract has been completed). Here too, however, the H-2 regulations only incorporate the existing practice even among most non-users. The 1980 Wage Report for the Hudson Valley indicates that 55 percent of the apple growers surveyed paid for the workers' transportation. Moreover, it is certainly the case that other workers received transportation costs indirectly, i.e. through the crewleader. If the H-2 users abandoned the H-2 program, they would in most cases be required by economic reality to continue paying transportation costs, either directly or indirectly.

Moreover, the transportation costs for H-2 workers do not necesssarily exceed the transportation costs associated with U.S. workers. The Jamaican workers are flown to Florida on late-night chartered flights and then carried by chartered bus from Florida to the Northeast apple orchards, covering a total distance of 1,500 to 2,000 miles. These group transportation arrangements probably cost the employer less per worker than would be required to bring individuals and small crews of U.S. workers an equal distance, i.e. from Texas, Arizona or other areas in the West. Moreover, since many Jamaicans work in both the apple and sugarcane harvest, the apple employer must pay only one-half of the roundtrip transportation cost for the Jamaican worker.

4. Meals

The H-2 employers also claim the tax savings are offset by the requirement they must provide meals to workers recruited under the H-2 program. This is misleading on three grounds. First, the growers are not required to provide meals, but may instead provide kitchen facilities and allow the workers to purchase and prepare their own food. Many H-2 growers in the Hudson Valley area follow this practice as to the U.S. workers they employ, which is exactly what they would be doing if they were not also using H-2 workers. Second, even if the grower provides the meals, he may charge the workers the actual cost, up to $5.00 per day. Given the low quality of meals and the economies of scale involved, the meal requirement ordinarily costs the growers very little. Third, other growers in the area provide meals, either directly or through crewleaders, on similar terms. Thus these growers would again encounter the same costs outside the H-2 system.

5. "Social Security Tax" Paid to the Jamaican Government

Certain H-2 employers have recently claimed that their FICA and FUTA savings are offset by contributions to a "social security scheme in the worker's home island." However, it is far from clear that such a contribution, if any is made, comes from the employer rather than the worker. The contract negotiated between the New York apple producers and the Government of Jamaica for the 1981 season, a copy of which is attached as Exhibit A, authorizes two major deductions from the wages of the workers (in addition to deductions for meals and any transportation advance):

3% Three percent of a worker's earnings is transferred to the representative of the Jamaican government, to be used (i)for "premiums of life and other insurance" and (ii) to compensate the government for expenses incurred on behalf of the worker in an emergency.

23% An additional twenty-three percent of worker's earnings is transferred to the representative of the government of Jamaica and $250 thereof is held by the government for up to six months, for the purpose of compensating the government and the employer for costs incurred in connection with the recruitment and employment of the worker. Costs recoverable by the employer from this fund include:

- a. any transportation advance paid the worker but not otherwise recovered through deductions by the employer; and
- b. any sums the employer must pay to the Immigration and Naturalization Service because of the employees "absenting himself without leave from his employment."

Thus the farm employer using H-2 workers deducts 26% of the worker's wages above and beyond deductions for meals and transportation advance. The worker immediately loses all right to the 3% deduction, while he is entitled ultimately to recover that portion of the 23% deduction which has not been withdrawn to pay special expenses incurred by the government or the employer.

The contract between the apple growers and the government of Jamaica contains no provision requiring the employer to pay into a social security system. It seems likely that H-2 employers who claim to be paying into a social security scheme on behalf of H-2 workers are referring to funds deducted from the wages of the worker, probably from the 3% paid by the workers to the Jamaican government for the purchase of "life or other insurance". Clearly this subcommittee cannot accept the employer's vague claims concerning contributions to a foreign social security fund without some minimal showing that it is the employer, not the worker, who is making any such payments.

Even if the growers are themselves paying into a social security fund in Jamaica, these payments are significantly less than would be required under FICA. The Florida Fruit and Vegetable Association has indicated to the House immigration subcommittee that the sugar companies would make a contribution of $40 to the foreign social security scheme on behalf of a worker who earned $4,300, a taxation rate of 1%. Thus, the H-2 employees are saving 5.65% in FICA payments even if the claimed contributions come from the employers.

6. INS Bond Costs

Farm employers have also claimed that the H-2 workers are more expensive because an H-2 employer must "post a bond". However, DOL and INS officials familiar with the H-2 program report that they know of no cost to the employer in obtaining these bonds, either because no money is posted or because the entire sum is returned to the employer at the end of the season. At least in some cases the H-2 employers do not even post a bond, but execute an agreement with the INS calling for liquidated damages for violations of the visa petition. A copy of such an agreement is attached as Exhibit B. As long as there are no violations of the visa petition, the employer incurs no cost under this agreement.

Further, the standard contract with Jamaica provides that the employer may recover from a worker's wages being held by the government (i.e., from the 23% deduction) for any payments made to the INS for that worker's failure to adhere to the terms of his visa.

7. Transportation Between Camp and Field

H-2 employers have also claimed that a special cost associated with the H-2 program is payment of the workers' transportation to [the] field" (Statement of the Florida Fruit and Vegetable Growers Association to House immigration subcommittee, October 14, 1981, p. 14). However, it has long been a normal and routine aspect of farm labor that migrant workers living in the employers' housing would be transported to the employers' fields at the employers' cost, either by the employer or by a crewleader paid by the employer. Indeed, since this transportation is primarily for the benefit of the employer, to deduct for this transportation would violate the Fair Labor Standards Act if the net wage fell below the minimum wage, 29 C.F.R. §531.3(d)(1). Regardless of whether they use the H-2 program or not, most apple, tobacco, and sugarcane producers would be required to pay for this transportation.

It is indisputable that agricultural employers reap a major tax windfall whenever they employ H-2's rather than U.S. workers. The foregoing demonstrates, at least for the Hudson Valley, that the tax windfall (in New York the 6.65% FICA savings) is not offset by "special costs" incurred by the growers solely because of their use of the H-2 program. To the contrary, H-2 users in this area pay lower wages than non-users, thus realizing additional financial benefits.

II. Revision of the H-2 Program

Although the H-2 provisions were intended to ensure that U.S. workers receive priority in U.S. employment, the program is so deeply flawed that foreign workers are being admitted each year without any meaningful determination of whether U.S. workers are available. The H-2 program has consequently never served even its stated purpose of meeting local labor shortages, much less contributing to the control of illegal immigration, the advancement of U.S. foreign policy goals, or any other major national interest. Most importantly, there is no justification for repeated supplementation of the U.S. agricultural labor market. Agricultural employers seeking harvest workers could satisfy their labor needs with U.S. workers if wages and working conditions were brought up to 20th century standards. Consequently, use of the H-2 program in agriculture should be terminated.

If the H-2 program is continued, major revision is required. Several necessary changes are briefly outlined below.

1. Social Security Tax

The Federal Insurance Contributions Act should be amended to delete the exemption for wages paid foreign workers. FICA taxes should be paid by the employer and deducted from the wages of the contract workers just as in the case of U.S. employees. This money should be gathered by the federal government in a special fund and paid to the workers upon their return to their homeland.

2. Unemployment Insurance Tax

Congress should also eliminate the exemption from the unemployment insurance tax for H-2 wages. Unemployment insurance is a "risk-sharing" system, in which all employers share in both the cost of supporting the temporarily unemployed and the benefits of stable consumer purchasing power. Moreover, since the H-2 growers directly contribute to unemployment in their own area by hiring foreign workers rather than local workers, it is unfair that these growers are the only employers exempted from the resultant increase in unemployment insurance payments.

The unemployment insurance exemption will expire by its own terms on December 31, 1981. Congress should refuse to extend this exemption. The Select Commission, the National Commission on Unemployment Compensation, and the Reagan Administration have all expressly recommended that this exemption be deleted.

3. Government Control of Foreign Recruitment

The H-2 provisions regulate only domestic recruitment. There is no similar control over the other half of the H-2 program, i.e. the recruitment of foreign workers. Employers will have an incentive to hire foreign workers, regardless of the tax aspects, as long as the employer can hand-pick an homogeneous, hardworking, and uncomplaining foreign workforce.

During World War II and the Bracero Program, the federal government was a principal actor in foreign recruitment. These programs had many failings, but they at least addressed the fact that direct selection of contract workers by the employers dooms a program from the outset.

The H-2 program should be supplemented to provide for federal government control of the recruitment, hiring, and transportation of the foreign contract workers. This should be done in cooperation with the sending countries, pursuant to formal government-to-government agreement. Employers using H-2 workers should pay for the cost of this program.

4. Retention of the AEWR

The H-2 provisions were intended to allow the admission of foreign workers only where there would be no harm to U.S. workers. Consequently the INS regulations provide that foreign workers may ordinarily be admitted only if the Secretary of Labor determined that such admissions would not "adversely effect the wages and working conditions of workers in the United States similarly employed". 8 C.F.R. Sec. 214.2(h) (3)(i). To dramatically expand the labor supply in a local market would obviously depress the wages in that market, absent some effort to offset this impact. As noted, DOL's "adverse effect wage rate"(AEWR) attempts to prevent this wage depression in H-2 areas by requiring employers to guarantee a minimum hourly income above the wage which would otherwise prevail. A provision of this type is absolutely essential to the protection of U.S. workers and must be retained. If employers are given access to the unlimited supply of foreign workers while being governed only by the minimum wage, farm wages in these workers would never increase, and would probably decline sharply.

As illustrated above for the Hudson Valley, the present AEWR methodology does not serve its purpose very well. The AEWR should be amended to (i) ensure that no employer obtains H-2 workers without offering a wage equal to the highest wage offered by a significant number of his neighbors, and (ii) to correct for the depressant effect on local wages of the presence of H-2 workers. I believe that these goals could best be achieved by calculating the AEWR on the basis of the wages actually being paid in the specific area and crop by those employers at the top of the pay scale, and then adjusting this figure upward in relationship to the degree of H-2 use in this market.

5. Early Recruitment

Agricultural employers have suggested that the certification process be "streamlined" by limiting domestic recruitment to the area of intended employment. This type of amendment would "solve" the problem of delay in the H-2 program by ending all recruitment of U.S. migrant workers for farm labor. It is difficult to understand why apple jobs in New York or tobacco work in Virginia should be offered to foreign migrant workers in Jamaica and Mexico but not to domestic migrant workers in Texas and Florida.

The timeliness of certification decisions has been a real problem in the H-2 program, seriously limiting the opportunity for U.S. workers to get these jobs. However, "streamlining" the recruitment process is exactly the wrong solution, for there is already very little time for recruitment of domestic workers. The focal point of reform should be to ensure that recruitment begins earlier, while U.S. migrants can still be reached in the homebase states, and that the various determinations in the certification process are made without delay.

Mr. Chairman, that concludes my prepared remarks.

FORM A

AGREEMENT FOR THE EMPLOYMENT OF BRITISH WEST INDIANS IN AGRICULTURAL WORK IN THE UNITED STATES OF AMERICA

EXHIBIT A

THIS AGREEMENT made on the ______________________

between ______________________ of the FIRST PART

(hereinafter called "the employer") and ______________________

of the SECOND PART (hereinafter called "the worker"), particulars in respect of whom are specified in Clause 1 of this Agreement and H.F. EDWARDS, acting for and on behalf of the Governments of Antigua, Barbados, British Honduras, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts, St. Lucia and St. Vincent of the THIRD PART (hereinafter called "the Government's Agent").

WITNESSETH:

WHEREAS, the employer, the Government of Jamaica (hereinafter called "the Government") and the worker mutually desire that the worker shall be beneficially employed in the United States of America to alleviate the present shortage of agricultural labour:

AND WHEREAS, the Government's Agent has been duly authorized to act for the Government in this behalf:

NOW THEREFORE, in consideration of the above and of the mutual undertakings hereinafter set forth, the PARTIES HEREBY AGREE, as follows:—

1. PARTICULARS IN RESPECT OF THE WORKER

The particulars in respect of the worker are as follows:—Place of Recruitment: For the purposes of this agreement the place of recruitment shall be deemed to be Kingston, Jamaica.

Worker's Contract No. ______________________

Worker's address in the U.S.A. ______________________

Place of engagement New York

Area of employment New York

2. SCOPE OF EMPLOYMENT

The Employer will cause the worker to be employed and the worker will serve the employer or the farmer within the area of employment specified in Clause 1 of this Agreement to whom he has been assigned by the employer for the period and upon and subject to the terms and conditions hereinafter mentioned.

3. PERIOD OF EMPLOYMENT

The employment of the worker hereunder shall commence from the date of his arrival at the place of engagement as specified in Clause 1 of this Agreement and shall (unless sooner terminated as hereinafter provided) continue until November 15, 1981

4. OBLIGATIONS OF THE WORKER

(a) The worker will proceed to the place of engagement in the United States of America as specified in Clause 1 of this Agreement when and as the Government's Agent shall require;

(b) The worker shall work and reside at the place of engagement as aforesaid or at such other place as the employer with the approval of the Government's Agent may require;

(c) The worker shall at all times during the continuance of his employment hereunder, as the employer or his agent may from time to time require, diligently and faithfully perform the duties of an agricultural worker or any duties connected therewith or related thereto, under the supervision and direction of the employer or his agent, so, however, that the worker shall not be obliged to work for more than eight hours in any period of twenty-four consecutive hours nor on one day in each period of seven consecutive days;

(d) The worker shall obey and comply with all rules and regulations of the employer which have been approved by the Government's Agent relating to the discipline and the care and maintenance of property;

(e) The worker shall maintain the living quarters furnished to him by the employer or his agent in the same condition as to cleanliness as when received by him;

(f) The worker shall not at any time during the continuance of his employment hereunder work for or serve any person other than the employer, or the farmer to whom he has been assigned by the employer;

(g) The worker shall execute such instruments as the Government's Agent may require for the purpose of giving full force and effect to this Agreement.

(h) The worker shall not store in the housing provided him by the Employer articles or containers whose aggregate size is larger than 14,300 cubic inches and so that no one article or container is larger than 8,250 cubic inches.
The employer shall be responsible for the transportation of such luggage in accordance with Clause 5 (k)(i) hereof.

5. OBLIGATIONS OF THE EMPLOYER

(a) The employer shall provide or pay for the reasonable transportation and subsistence expenses of the worker in respect of the journey from Kingston, Jamaica to the place of engagement as specified in Clause 1 of this Agreement, provided the worker completes fifty per cent (50%) of the period of employment specified herein; provided, however, that where such transportation and subsistence expenses have been advanced, the employer may in accordance with Clause 6 (b) of this Agreement deduct such advances from the worker's earnings and retain the amount deducted until the worker completes fifty per cent (50%) of the period of employment specified herein, in which event the worker shall be entitled to reimbursement by the employer of the amount so deducted. Nothing in this Clause shall in any way derogate from or result in the worker being placed in a less advantageous position in relation to transportation and subsistence applicable to domestic workers in accordance with prevailing practice in the area of employment.

(b) The employer shall provide, for the period of the worker's employment as stated in Clause (3) above, the opportunity of doing not less than 75% of full time work (as hereinafter defined) and in default of so providing shall upon the termination of the employment for any cause (other than termination under Clause (10) below) pay to the worker the difference between the amount which the worker would have earned had such opportunity been provided and the total sum of his earnings and subsistence allowances paid to him under Subclause (e) of this Clause. For the purposes of this Clause—

(i) "full time work" means work for eight hours per day six days per week at wages prevailing in the area of employment for the type of work in question;

(ii) a worker to whom an employer makes work available as aforesaid shall be deemed to be provided with the opportunity of doing full time work for as long as the work is so available notwithstanding that he does not do it by reason of his unavailability, unwillingness or inability to do it;

(iii) the wages prevailing in the area of employment shall in the case of work paid for by piece rates (but only in such cases) be deemed to be the actual average earnings of the worker while engaged in work of that type.

(c) The employer shall during the continuance of the worker's employment hereunder, pay the worker in lawful money of the United States of America, at weekly o fortnightly intervals, wages at rates not less than the prevailing hourly rates (i.e. $ 3.48 * cents per hour) or the prevailing rates for piece work (as the cas may be) paid for similar work under the same conditions and within the particular area of employment;

(d) The employer shall, without prejudice to Subclause (b) of this Clause, provide during the continuance of the worker's employment hereunder sufficient work to ena ble the worker, being willing and able to work, to earn a sum not less than the sum of $ 70.00 (hereinafter referred to as "the stipulated minimum earn ings") in respect of each payroll period of two weeks, or in the event of failure from any cause to provide such sufficient work, the employer shall pay to the worke an allowance of a sum which together with the sum earned by the worker during such payroll period will equal the stipulated minimum earnings; or if the worker ha not earned any wages during such period, the employer shall pay to the worker a sum in the amount of the stipulated minimum earnings;

(e) The employer shall, in the event of:

(i) the worker commencing his employment hereunder during the currency of any payroll period; or

(ii) the worker's employment terminating during the currency of any payroll period; or

(iii) the worker not being able or willing to work for any part of any payroll period, provide sufficient work to enable the worker to earn as a minimum during th part of such payroll period in which he works such sum as bears to the stipulated minimum earnings the same proportion as the part of the payroll period du ing which he has worked bears to the entire payroll period;

(f) The employer shall provide such living quarters for the worker as are in accordance with the pertinent Federal and State Regulations and such meals for the worke as may be required or approved by the Government Agent, such living quarters to be provided without cost to the worker and if the worker prepares his own meals, h shall be furnished, without cost, cooking utensils and cooking facilities, including fuel; and the cost to the worker of any such meals provided shall not exceed th actual cost to the employer for providing the same or $ 5.00 plus tax ** , per day, whichever is less;

(g) The employer shall not at anytime during the continuance of the worker's employment hereunder remove the worker from one area of employment to any other are of employment without the prior approval of the United States Employment Service and the Government's Agent;

(h) The employer shall not at anytime during the continuance of the worker's employment hereunder require him to purchase articles or services for consumption or u by him from any source out of his choice;

(i) The employer shall:

(i) provide for the worker at no cost to the worker the same guarantees with respect to medical care and compensation for personal injury arising out of and in th course of the worker's employment hereunder and for disease contracted in the course of such employment and directly attributable to the work in which th worker is engaged as may be required or permitted in like cases for domestic agricultural workers under the applicable State Law of the State in which th worker is employed when he receives such personal injury or contracts such disease;

(ii) in the absence of applicable State Law providing for payment of compensation to the worker for personal injury received or disease contracted by him as th result of his employment, the employer shall procure insurance satisfactory to the Government's Agent to provide for such compensation.

(j) The employer shall provide a suitable burial for the worker if he dies during the continuance of his employment hereunder or in lieu thereof at the request of t next-of-kin pay the cost involved in the preparation and transportation of the deceased worker to the place of origin;

(k) The employer shall upon the termination of the worker's employment hereunder (otherwise than in any of the events specified in Clause (10) of this Agreement) obligated as follow:

(i) If the worker is repatriated because new and approved employment is not available or special personal or domestic circumstances exist which make repatri tion desirable or necessary in the opinion of the Government's Agent, the employer shall pay the cost of reasonable transportation and subsistence expenses the worker (including the transportation of such luggage as he may be entitled to carry without extra cost under the terms of the Agreement of his transport tion) to Kingston, Jamaica;

(ii) provide any insurance that the Government's Agent may approve on behalf of the worker in respect of the return journey referred to in Subclause (i)(i) of th Clause;

*43¢ per 1-1/8 bushel Fresh market
25¢ " " " Drops

** Or Self-feeding

(iv) use all due diligence and cooperate with the Government's Agent in effecting such transportation, but so that such transp
the knowledge and consent of the Government's Agent;

(m) The employer shall not at anytime during the continuance of the worker's employment hereunder do any act or thing that w
conditions or sanitary or medical services generally inferior to those afforded to other agricultural workers in the same a
him to discrimination in employment because of race, creed, colour or national origin;

(n) The employer shall transmit to the Government's Agent a copy of all rules and regulations concerning safety, discip

(o) The employer shall transmit, within fourteen days of the completion of each payroll period, copies of the payroll r
and to such place as may be approved by the Government's Agent, together with all sums deducted from the work
Clause 6 of this Agreement and all sums paid directly to the Government's Agent as required by Clause 7 of this

(p) The employer shall, as soon as possible after the execution of this Agreement, give security to the satisfaction of the Gov
employer's obligation hereunder;

(q) The employer shall in the event of the worker being refused permission to land in the United States of America, provide at the
the worker and his baggage back to Kingston, Jamaica and pay the reasonable subsistence expenses of the worker on his journey
together with the premium on insurance that the Government's Agent may approve on behalf of the worker.

6. DEDUCTIONS FROM WORKER'S WAGES

(a) During the continuance of the worker's employment hereunder, the employer shall deduct from the wages due to the worker in respect o
term for the purpose of this paragraph shall include subsistence allowance) the following:

(i) a sum equivalent to 3% thereof (or such lesser percentage thereof for such period as the Government's Agent may at anytime direct) wi
the payrolls the employer shall transmit to the Government's Agent at the British West Indies Central Labour Organisation at Washing
other place or places as the Government's Agent may direct for the purpose of being applied in accordance with Subclause (a) of Clause 8 o

(ii) the cost of meals provided by the employer for the worker in accordance with Subclause (f) of Clause 5 of this Agreement, at rates not exceedi
cified in that subclause.

(b) Where the wage due to the worker in respect of any payroll period exceeds stipulated minimum earnings, the employer may deduct any amount ad
transportation and subsistence expenses under sub-clause (a) of Clause 5 of this Agreement in the following manner:—

(i) If the wage exceeds the stipulated minimum earnings, but does not exceed $50.00 (United States Currency) by deducting from such excess a sum up to, bu
exceeding $14.00 (United States Currency);

(ii) If the wage exceeds $50.00 (United States Currency) by deducting therefrom a sum of $14.00 (United States Currency) plus 25% of the amount by which the wag
exceeds $50.00 (United States Currency); provided that if at the termination of the worker's employment hereunder (otherwise than by notice given on h
behalf under Subclause (d)(ii) of Clause 9 of this Agreement or in any of the events specified in Clause 10 of this Agreement) there shall remain unpaid an
balance of the amount advanced by the employer under Subclause (a) of Clause 5 of this Agreement aforesaid, the worker shall not thereafter be required t
repay such sum and his liability in respect of the payment thereof shall upon the termination of his employment as aforesaid wholly cease and determin

(c) Save as herein expressly provided no collections, deductions or rebates from the worker's wage should be made except as required by law.

7. ASSIGNMENT OF WAGES BY WORKER

The worker hereby authorises and directs the employer after deducting the sums specified in Clause 6 of this Agreement to pay directly to the Government's Agent, fro
the balance, if any, of the total wages of the worker during such payroll period, a sum equal to 23% of such total wage, and to transmit same together with payrolls to the Govern
ment's Agent at such place or places as the Government's Agent may direct, to be applied in accordance with Subclause (b) of Clause 8 of this Agreement; provided, however, th
Government's Agent may upon giving reasonable notice to the employer require the employer to discontinue making the aforesaid payments or may require him to increase o
decrease such payments by such percentage as the Government's Agent may specify.

8. OBLIGATIONS OF GOVERNMENT'S AGENT

(a) The Government's Agent shall apply every sum remitted to him by the employer in accordance with Subclause (a)(i) of Clause 6 of this Agreement to a fund which h
shall utilise for the purpose of defraying:

(i) the premiums on any life or other insurance which he may effect on behalf of the worker in accordance with Subclause (c) of this Clause;

(ii) in his absolute discretion any extraordinary expenses reasonably incurred on behalf of the worker in any emergency.

(b) The Government's Agent shall remit every sum transmitted to him under Clause 7 of this Agreement to the Government to be placed, subject to Subclause (e) o
Clause 11 of this Agreement, to the credit of the worker in accordance with the arrangements made between the worker and the Government.

(c) The Government's Agent shall, if it shall appear to him to be expedient to effect any life or other insurance on behalf of the worker, effect such insurance on h
behalf.

(d) The Government's Agent may advance on behalf of the worker the reasonable transportation and subsistence expenses of the worker from the place of recruitment
the place of engagement.

(e) The Government's Agent shall make available at no direct cost to the worker the services of competent attorneys retained by the Government's Agent to act o
behalf of any worker who may require such services. The legal services available hereunder shall relate to matters affecting the legal rights of the worker whic
arise during the course of this contract and except in fee generating cases such legal services shall be provided at the expense of the Government's agent.

9. TERMINATION OF WORKER'S EMPLOYMENT

(a) The employer may terminate the worker's employment hereunder at any time OR the employer may advance the end-of-season termination date of employment spe
cified in Clause 3 by giving the Government's Agent and the worker at least ten days notice in writing and the worker's employment hereunder shall terminate upo
the expiration of such notice period, or upon his departure from the area of his employment as specified in Clause 1 of this Agreement, whichever shall first occu
subject to the provision of sub-clause (b) of Clause 5 of this Agreement provided that any day, after giving such notice of termination on which no work is availab
through no fault of the employer, shall not be counted and the termination date shall accordingly be extended.

(b) In the event of a contract termination by mutual agreement between the employer and the worker or by the employer for reasons beyond his control, the employe
shall be responsible for the employment guarantee provided for in Subclause (b) of Clause 5 of this Agreement for the period beginning on the day after the worker
arrival at the place of employment and ending on the date of the contract's termination.

(c) When an Act of God occurs, the employer may by notice to the Government's Agent and to the worker, terminate the contract forthwith or as from such subsequen
date as shall be specified in the notice and the employment guarantee in Subclause (b) of Clause 5 shall cease from the date of termination of such contract acco
dingly.

An Act of God shall mean any frost, hail-storm, flood or other natural calamity, other than drought of such a character as to make further fulfillment of the con
tract impossible.

(d) The Government's Agent may terminate the worker's employment hereunder as follows:

(i) by giving to the employer on behalf of the worker, at least ten days notice in writing; or

(ii) forthwith upon being satisfied that the worker is by means of unemployment or under-employment or improper treatment suffering undue hardship.

10. TERMINATION FOR CAUSE

(a) The employer shall be entitled immediately to terminate the worker's employment hereunder and the Government's Agent shall be entitled immediately to cause th
worker to be repatriated at the worker's expense in the event:

(i) The worker is found to be or become subject to deportation under the laws of the United States of America, or if the employer or the Government's Agent deter
mines that the worker is unwilling to work in accordance with the terms of this Agreement or determines that the worker has committed an act of misconduc
or indiscipline or if the worker engages in work at any time for any person other than the employer, or the farmer to whom he has been assigned, or violate
any law of the United States of America; or

(ii) The worker is unable or unwilling to produce sufficient work to meet the minimum production standards generally applicable to the agricultural crop in th
area of employment after he has been afforded whatever reasonable trial and training period prevalent in the aforesaid crop and area of employment.

(b) When the worker's employment is terminated pursuant to the provisions of Clause 10(a) above, the employment guarantee provided for in subclause (b) of Clause
shall not be applicable.

11. EXPENSES COLLECTABLE ON REPATRIATION

(a) Any expenditure incurred by the Government's Agent in repatriating the worker by reason of his employment having been terminated under Clause 10 of this Agree
ment shall be repaid by the worker to the Government.

(b) Any balance of any amount advanced by the Government's Agent under sub-clause (d) of Clause 8 and which remains unrecovered.

(c) If the worker's employment hereunder shall be terminated by notice given on his behalf under Subclause (d)(ii) of Clause 9 of this Agreement or in any of the event
specified in Clause 10 of this Agreement, any balance of the amount advanced by the employer for transportation expenses under Subclause (a) of Clause 5 of thi
Agreement that remains unpaid at the termination of the worker's employment as aforesaid shall be repaid by him to the employer.

(d) In the event of the employer being required to pay to the Immigration Authorities of the United States of America any sum not exceeding $250.00 (United States Cur
rency) by reason of the worker absenting himself without leave from his employment hereunder, the worker shall repay to the employer such sum, not exceeding th
sum paid by the employer to the Immigration Authorities as aforesaid, as may be retained under Subclause (e) of this Clause.

(e) For the purpose of securing the recovery of any amount payable by the worker under Subclauses (a), (b), (c), and (d) of this Clause, the Government shall be entitle
to set aside (after payment of such allowance to the worker's dependents as the Government may approve) all monies remitted by the Government's Agent unde
Clause 8(b) of this Agreement until an amount representing the cash equivalent of $250.00 (United States Currency) has been accumulated, and to retain suc
amount during the period in which the worker is employed in the United States of America and for a period not exceeding six months after the date of his repatria
tion, and subject to any order of a Court of competent jurisdiction and to any bankruptcy notice under any law relating to bankruptcy, to apply such amount to th
payment of any sum not exceeding the cash equivalent of $250.00 (United States Currency) as may be properly payable to the employer or to the Government i
respect of any of the matters referred to in Subclauses (a), (b), (c) and (d) of this Clause upon demand being made for payment thereof within the respective period
following, that is to say, in the case of any expenditure or debt referred to in Subclauses (a) and (b) of this Clause within a period of one month from the terminatio
of the worker's employment and in any other case within a period of six months from the date of his repatriation.

Witness ______________________ Worker's Signature ______________________

Witness ______________________ Employer ______________________

By ________ ______________________

Official Title Executive Secretary

Witness ______________________ Government's Agent Signature D. T. Edward.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

EXHIBIT B

AGREEMENT

between

____

Employer of alien labor under the provisions of
Section 101(a)(15)(H)(ii) of the
Immigration and Nationality Act
(66 Stat. 168)

and

The United States of America

THIS AGREEMENT made by ______________________, located at ______________________, ______________________, hereinafter called "the employer", subject to approval and acceptance on behalf of the United States of America by a District Director of Immigration and Naturalization, witness as follows:

WHEREAS the employer desires from time to time to obtain the services of certain aliens, hereinafter called "agricultural workers", who are coming to or remaining in the United States temporarily to perform labor for which unemployed persons capable of performing such labor cannot be found in the United States;

AND WHEREAS the District Director has granted or from time to time will grant the employer permission to import and/or permission to continue employment in the United States of such agricultural workers, subject to revocation on notice, upon the terms and conditions hereinafter set forth by the employer;

NOW THEREFORE, in consideration of the foregoing, the employer does hereby covenant and agree:

(1) That the employer shall not employ any such agricultural workers in the United States except in strict compliance with the terms of a visa petition, hereinafter called the "petition", filed by the employer under the provisions of Section 214(c) of the Immigration and Nationality Act and approved by a District Director of the Immigration and Naturalization Service.

(2) That the employer shall not employ any such agricultural workers in excess of the number or beyond the period of time authorized in the petition as approved and as hereinabove set forth;

(3) That the employer shall employ such agricultural workers only in the occupations and only in the places stated in the petition as approved and as hereinabove set forth;

(4) That the employer shall employ only such agricultural workers as have been duly admitted to the United States as nonimmigrants within Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act or who by proper authority have had their status changed to such nonimmigrant classification;

(5)(a) That the employer shall furnish with the petition an alphabetical list in duplicate of the agricultural workers to be employed, showing name, date, port of entry, and when he is in the United States the agricultural worker's copy of his Arrival-Departure Record (Form I-94); but if the identity of the agricultural worker is not known at the time the petition is filed, such lists shall be filed with the immigration officer with whom the petition is filed within twenty-four hours after such agricultural worker commences employment with the employer;

(b) That, in the event any agricultural worker absconds, the employer shall notify the immigration officer with whom the petition was filed within twenty-four hours of the name of such agricultural worker and the known facts concerning the violation;

(c) That within twenty-four hours after termination of employment, the employer shall submit to the immigration officer with whom the petition was filed an alphabetical list, in duplicate, of the agricultural workers leaving his place of employment and their destination;

(6) That each such agricultural worker admitted to the United States or permitted to remain therein temporarily under the terms of this agreement shall depart from the United States without expense thereto

immediately upon the conclusion of his services as an agricultural worker with such employer or with thirty (30) days after notification to the employer by a District Director of Immigration and Naturalization of revocation for any reason of the authority under which the temporary stay of any such agricultural worker in the United States was permitted; and the employer shall within ninety (90) days thereafter furnish to the District Director of Immigration and Naturalization at ______________________________ evidence satisfactory to the District Director of the time and place of such departure; provided that the authorized transfer of an agricultural worker from the employer to another employer in the United States shall, when approved by a District Director of Immigration and Naturalization, be considered for the purposes of this agreement the same as a departure from the United States;

(7) That for each and every violation with respect to any agricultural worker of paragraphs (1) through (5) above, the employer shall pay to the United States of America as liquidated damages, and not as a penalty, the sum of ten ($10.00) dollars, lawful money of the United States; and that for each and every violation with respect to any agricultural worker of paragraph (6) above, the employer shall pay to the United States of America, as liquidated damages and not as a penalty, the sum of two hundred ($200) dollars, lawful money of the United States;

(8) That a District Director of Immigration and Naturalization shall retain authority for any reason and upon notice to the employer to revoke the authority under which the temporary stay of any agricultural worker in the United States may have been permitted.

(9) That this agreement shall cancel and supersede any prior agreement between the parties hereto with respect to the subject matter hereof (but not as to any rights and liabilities already accrued under any prior agreement), and shall take effect immediately upon its approval by a District Director of the Immigration and Naturalization Service.

(10) This agreement shall apply to each petition filed by the employer for temporary agricultural workers and shall remain in effect unless and until cancelled by either party upon ten days' notice in writing to the other party, but the cancellation shall not terminate any rights or liabilities hereunder already accrued, or which may thereafter accrue with regard to any agricultural worker employed by the employer prior to such cancellation.

IN WITNESS WHEREOF, this agreement has been signed, sealed, and delivered this ______________ day of ______________________, 19____, at ______________________ ______________________.

____

By ______________________________

Title ______________________________

Attest:

______________________________ SEAL

Title ______________________________

______________________________, 19____

Approved and accepted on behalf of the United States of America.

____
(City and State)

____
District Director

Senator SIMPSON. Let me ask several questions here and kind of skip around a bit.

Mr. Karalekas, your request is that we must do something about the paperwork and streamlining that is so necessary. I think I would ask you how you respond to Mr. Semler's assertion that streamlining the H-2 certification process by limiting domestic recruitment to the area of intended employment would really effectively end all recruitment of U.S. migrant workers for farm labor.

Mr. KARALEKAS. Well, Mr. Chairman, I think you posed the same question to Mr. Hart, earlier this morning. The proposal by the agricultural employers that domestic recruitment be limited in time and scope is not a propopsal which would bar any U.S. citizen from having preference in filling the job.

Our proposal focuses on the employer's recruitment responsibilities. In our view, to compel a small farmer from Wyoming, Massachusetts or Maine to recruit workers in New Mexico, Florida, Texas, and California makes no sense from an economic standpoint. If those States are labor-short, for example, Florida which currently imports the largest number of H-2's. What sense does it make to force an employer to recruit there?

The second point is that under the current immigration law, if you want to bring a alien into the United States to work permanently under the sixth preference, you have to go through a labor certification process. The process for permanent aliens, those who are going to stay in this country for the rest of their lives, merely requires the employer to test the local marketplace. He is not required to go to Alaska or Hawaii or California.

So we think and also in limiting the scope and cost of recruitment, this would be a wild-goose chase, if you will. We think that at the time and place is of significance to the employer. Again, that does not restrict a worker in New Mexico or Florida or wherever from coming and taking the job. It just limits the burden imposed upon the employer to chase people around in 50 States.

Senator SIMPSON. To what extent, in your experience, do growers actually come to prefer the H-2 workers? Among your clients, what percentage employ principally H-2 workers, and what percentage are recurrent users of the program?

Mr. KARALEKAS. Well, all of the employers that we represent who employ both H-2 workers and U.S. workers. For example, in the east coast apple harvest, the growers employ from 12,000 to 15,000 U.S. citizens and approximately 30,000 to 4,000 H-2 workers.

Our growers would much prefer to hire local U.S. workers from down the street than to go through the complicated, expensive, litigious, bureaucratic process. Unfortunately, as the Department of Labor has certified and as the growers' experience has shown, American workers are becoming less and less available.

And there are really only two alternatives available to employers now, Mr. Chairman. One is the H-2 program, which for many employers is almost impossible because of the reasons I have mentioned; two, is to use illegal aliens. Those are the only two options.

I have made proposals for improving the mechanism for using the legal workers. And I would just like to point out that the tobacco growers in Virginia whom we represent, began using in 1,000 H-2 workers each year in 1979, previously used 1,000 illegal Mexicans year after year. Because of raids and other factors they tried to get into the H-2 program. They finally did it successfully, but it required a tremendous effort.

Senator **Simpson**. Do you believe any program that we come up with is going to be successfully adapted in order to meet the legitimate labor needs of employers in the Southwest who are going to lose large numbers of illegal workers as a result of the tightened immigration policy?

Mr. **Karalekas**. I do, Mr. Chairman. What has to be anticipated by the Congress is that when you legalize the status of the illegals currently in the country and if you at the same time impose sanctions on employers, there is going to be very large shortfall of farmworkers.

Unless the system is modified before this happens, the whole thing is going to break down. The H-2 program is largely unavailable to thousands of growers simply because it cannot handle the paper, and the time constraints. The various agencies are already under tremendous paperwork burdens from other types of alien programs.

So it has to be simplified. Otherwise, you are going to have illegals here until into the next century.

Senator **Simpson**. Let me ask Mr. Semler, the Department of Agriculture has testified that the numbers of domestic migrant farmworkers has decreased significantly in recent years, I think from 400,000 down to 200,000 in 10 years.

What is your estimate of the current population of U.S. migrant workers? And is that number, in your mind, sufficient to meet the needs of agriculture without the importation of foreign labor?

Mr. **Semler**. I think, as we all know, the estimated number of workers is very difficult, and I have no particular expertise in this area other than to refer to the Government studies that I am familiar with. The figure I find comfortable is 250,000 U.S. migrant workers with another 750,000 family members and persons who travel with them, constituting slightly under 1 million U.S. migrants. Seasonal is in another category altogether.

I think it is probably true also that the number of farmworkers has declined. I think we also need to keep in mind the number of farm jobs has declined correspondingly or even in greater number.

The answer to the final question is, Yes, I think U.S. workers could be found for these jobs under the right conditions. No one would argue but that there are a variety of jobs in the economy that are difficult, that because they are difficult, in order to attract workers to those industries employers offer high wages and good working conditions.

The same market operation would work in agriculture, and all that we are asking is that it be allowed to operate, rather than giving these employers a particular subsidy at the cost of the U.S. farmworker.

THE TIME FRAME FOR RECRUITMENT OF DOMESTIC WORKERS

Senator **Simpson**. I might ask, Ms. McCain, there has been a discussion of the need for early recruitment of domestic migrants. What time frame would be adequate? How could these employers be insured that these workers would actually show up? I would be interested in your views on that.

Ms. **McCain**. First let me explain that the 80-day recruitment period that is now required in fact boils down to very close to 20 days. First you must deduct the time period after the employer informs the Job Service of the number of U.S. workers he has hired or had contact with. That is done approximately 30 days before the employer's date of need, and thereafter the regional Department of Labor issues the certification approximately 25 days before the date of need. You have now reduced an 80-day recruitment period to 50 days. Likewise, at least the first 20 of the remaining 50 days is used for the initial processing of the application. So, the current period recruitment in terms of how much time is actually spent looking for workers or sending jobs orders to other States or local job offices, is much shorter than what it might seem in theory.

It might be sufficient if there were a requirement of 30 days for actual recruiting by the Job Service Offices. This should, be the actual period of U.S. recruitment, not taking into account whatever administrative periods that are needed. Whatever time period is, should include some kind of "job mart". This has been going on now in Maine, that is, job marts held around the State and in New England in the supply areas so that the recruitment period is a reality. Rather than someone going off for an interview 400 miles away, the employer not being there, and the worker not wanting to go back again.

THE DECREASE IN H-2 USAGE IN THE LOGGING INDUSTRY

Senator **Simpson**. You heard the testimony of the American pulpwood people, testifying that actually the number of H-2 loggers has decreased from 3,459 to 520 in present times and that less than 2 percent of the Maine logging operations employ Canadian woodsworkers.

Do you believe those figures are accurate? And if so, has the employment of U.S. loggers increased correspondingly?

Ms. **McCain**. The figures are not meaningful figures in that the number of U.S. workers has not been increasing proportionately to the decrease in H-2 workers. At the same time when there has been a great deal of pressure from the domestic or New England work population against this program, logging employers have used another method of obtaining imported labor. "Commuter visas" replaced some of the H-2 workers when the public spoke out against the use of H-2's.

Right now most of my clients are in northern Maine, in the most distant outreach points proximate to woods jobs. Yet, they cannot get a job and they just watch the cars of Canadians driving by their houses.

Senator **Simpson**. What portion of your clients are from southern Maine who would be willing to take jobs in the north, any of those?

Ms. **McCain**. Probably I have represented 100 or 200 woodsworkers in the past year. I would say if you were to split the State in half, it would probably be one-third or maybe one-quarter from the southern half of the State.

Senator SIMPSON. Mr. Williams, you indeed have had long experience in representing clients in this area, much of it in pro bono work, I believe. And I commend you for that. Indeed, it is a most important role for an attorney—as long as you get to eat in between those experiences.

Mr. WILLIAMS. I am doing well.

Senator SIMPSON. Good. If the decision is made to continue the H-2 program or to institute a transitional temporary worker program, what steps do you think we should take to improve the incentive to employers to hire U.S. workers first?

Mr. WILLIAMS. Well, I think the key thing here is recruitment, and I would agree with Mr. Sorn that one of the major stumbling blocks is the operation of the Employment Service offices. We have heard a lot of talk today about recruiting. What actually takes place in recruiting is one day in the town where I am, the representatives of the sugar cane industry show up, there is no advance word in the community, no place that farmworkers are likely to find out about the presence of these people or is it known that there are going to be people hiring for sugarcane jobs that day.

At all the other times of the year, if a worker wants to go in to get a job picking apples, just as Mr. Karalekas says, a farmer needs a lawyer to get H-2 workers. An American worker at this point in time needs a lawyer to get a job picking apples in Northern States.

For one thing, they will not even tell you the name of the employer you are going to work for or the place of employment until you agree to accept the job. They will not show you the job offers in the Employment Service. They will not even tell you the name of the employer.

How many people in this country would accept a job not knowing who they are going to work for? But as a condition of just even seeing the clearance order, you have to first agree to take the job. Then the workers are often sent back and forth in the Employment Office this year to get a job in sugar cane, and to come to the Employment Office as many as four times in a 2- or 3-week period.

So I think the first step is to focus on the recruitment aspect. I do not think it is necessary—it might not be necessary to lengthen the period of time, but we ought to allow workers to preregister for jobs.

I have many clients who would like to work in tobacco in Virginia. They ought to be able to go into the Employment Service in January and say, "I would like to work in tobacco this summer. When the tobacco clearance orders, job offers from these H-2 employers in Virginia come into your office, would you please advise me so that I can go down and apply?"

I think if we just instituted a process as simple as that, we could improve recruitment.

Senator SIMPSON. But you all indeed concur that we have reached some sort of point where the employer really has to hire a lawyer to obtain an H-2 employment?

Mr. WILLIAMS. Well, I agree. And I agree that they do hire very good counsel.

Senator SIMPSON. Plainly. [Laughter.]

Well, the Commission certainly felt that the streamlining of H-2 was a critical point, and I think that the legislation will reflect that. And you yourself have testified that the Department of Labor does a poor job of protecting American farmworkers from exploitation and abuse.

What is your position, if I might ask, on the administration's temporary worker program proposal, a pilot program?

Mr. **WILLIAMS**. Well, at this point, any of these programs seems to me to be an absurdity. We have 50,000 Haitian refugees in south Florida who are legally authorized to work and who are in the job market. There is no labor shortage at all. People are desperate for employment in the town where I am.

As a practical matter, I think that, for the reasons I stated in my testimony, a guest worker program is the lesser of two evils as between a guest worker program and an H-2 program, because in the guest worker program, as I understand the concept, the employee is not bound to one master and at least has some chance of being able to escape bad working conditions and go elsewhere and that that market effect would keep employers more honest than under the present H-2 system.

Senator **SIMPSON**. Just a couple of more questions. I would ask Mr. Semler, do you have any data on the tendency, if any, of eastern growers to use the H-2 workers season after season? What improvements in recruitment efforts on the part of the growers and the Department of Labor could insure that the H-2 program does not become a self-perpetuating program in certain sectors of the economy?

Mr. **SEMLER**. It is certainly true that an identifiable number of growers in apples and tobacco and sugar cane do use these H-2 workers year after year. Meanwhile, their neighbors in many cases do not. And I think that what we must do at the outset is look at their neighbors and see what those people are doing. Why can these people recruit U.S. workers and the others cannot? And I think one thing we find is that they are paying higher piece-rate wages, and that is a start, certainly.

Next, I talked earlier about earlier recruitment. I would like to explain that a little more. Right now we have this 80-day or 60-day recruitment period. But, as was mentioned, the job order does not really get down to the Employment Service office in North Carolina or Florida until at least a month after it is filed, and often much later. And then it is not distributed in the local offices in Florida until even after that.

So the recruitment period really amounts to about 3 weeks, in the middle of July for the apple harvest. By that time the migrant workers in Florida have already long gone. They leave in April or May. So almost regardless of what is in the job order, the workers do not learn of it.

So what you have got to do is to get a notice to them earlier. And the argument of the employers is often that, "We do not know our work needs. 'That is not true entirely, in that they have used approximately the same number of workers for many years, and they could make a rough estimate. I would say have them file the job orders sooner but allow them to amend them within a month before the harvest, if necessary, 25 percent up or down. Give it some flexibility.

Also, introduce some system of partial certification so that decisions are made piecemeal as you go along through the months rather than coming to one climactic overall decision where the certifications are up or down. Introduce more flexibility.

And certainly, the workers do not benefit in any way by the paperwork that is involved at this point. I certainly can agree with that. Job orders are much too long. They should be much simpler and gotten out more quickly.

Senator SIMPSON. Just finally, what is your perspective about the fairness of U.S. workers of the H-2 program as it operates in nonagricultural sectors which comprise, of course, the majority of H-2 admissions?

Mr. SEMLER. I cannot speak to that, Mr. Chairman, because I do not have any experience in that area.

Senator SIMPSON. Would anyone care to address that?

Mr. KARALEKAS. We also have dealt in that area, Mr. Chairman, and I think by and large the nonagricultural H-2 program works considerably better than the H-2 program for two basic reasons. Number one, you do not have this massive complex of regulations that apply—in other words, the 20 C.F.R. part 655 regulations which impose the adverse rate, housing, and all the rest of the burdens.

The second reason the H-2 program works better in nonagriculture is basically that the workers are not as time-critical. To bring in an H-2, let us say, to work for an oil company or as a domestic is not really time-critical as compared to agriculture where you are faced with the need to pick an apple within 6 or 7 days of the time it ripens.

So that nonagricultural H-2 program has not had the problems the agricultural program has.

Senator SIMPSON. You all are active and you all are advocates. What has been the role of the courts in the H-2 program as you perceive it? And that will be just a brief response, and that will be the concluding question. Ms. McCain?

THE IMPOTENCE OF H-2 ADMINISTRATIVE AND JUDICIAL REMEDIES

Ms. McCAIN. On the whole, both the administrative and judicial systems have not been able to address the problems that arise. I will give just one example: It is when workers who go and apply for jobs are refused the job. The worker can put in a complaint to the job service, or he can file a complaint in the courts. Then, 3 years later you are arguing over whether the worker reported to the right person when he went to meet with the employer. The time periods and timeframe involved do not relate to the issues that arise.

The other problem is in terms of retaliation. I am finding more and more people just call me and tell me what is happening but then will say, "I do not want to do anything about it. So-and-so spoke out, and now he cannot get a job and he is going to California." It is very difficult to work in a system when, whether it is agriculture or sheepherding or logging, it is really one large industry that is operating.

Mr. **Williams**. I think one of the difficulties has been that many of the court contests come down to the situation where labor certification has been granted and the H-2 workers are about to arrive and the apples are on the tree and in that situation it is very difficult for a Federal judge to say, "No, go back. We will try to find Americans."

The problem has been in structuring cases which address the problem. That problem developed 8 months prior in the whole certification and recruitment process, and it has been very difficult to have that process reviewed rather than the ultimate decision to certify or not to certify workers.

Mr. **Karalekas**. Mr. Chairman, one of the reasons we have strongly urged the Congress to simplify this program is the fact that it has been replete with litigation. Virtually no grower group that has tried to get into the H-2 program in the last 5 or 6 years has been able to do so without suing.

The Presidio Valley vegetable growers had to sue. The tobacco growers of Virginia had to sue. The apple growers have had to sue time and again. And in addition, because of its complexity, the H-2 program has been a special target of the Legal Services attorneys sitting at the table with me today. We have had litigation in Federal courts up and down the East Coast.

In fact, in one case which I cited in my prepared statement, "*Rios* v. *Marshall*," Legal Services attorneys filed suit in the southern district of New York against the Attorney General of the United States, Secretary of Labor, the Commissioner of INS, a host of apple growers, the State of Florida, and Jamaica. It is a massive action.

You are not going to solve the illegal alien problem if growers who are now using illegals want to get in the H-2 program if they are going to be faced with this kind of continuing litigation. We think simplifying the program will lessen the prospects for litigation.

Mr. **Semler**. Mr. Chairman, I think one problem that the courts have had is that there has often been no administrative record. The purpose of the certification requirement is to give DOL, the agency with the most expertise, the opportunity to make the first judgment on whether U.S. workers are available.

They say they can do that only if the job order is distributed. And the litigation has often come to the courts before the job order has even been distributed because the litigation concerns the terms of the job order. Because the recruitment process is now so compacted and delayed, the litigation comes before the court 2 or 3 weeks before the harvest begins.

The judge is faced with making the decision not only as to who is correct as to what must be included in the job order, but then he must immediately turn around and make the decision on whether U.S. workers are available or not without any record whatsoever of any administrative determination.

So you can only improve the litigation and the judges' posture, which is very difficult, if the Department of Labor or the INS builds a record. And they have to have the time to do that.

Senator **Simpson**. Well, I did practice law for 20 years, and I was one of you at one time. And brothers and sisters of the bar, I see you would all like to have a spirited go at some of those questions. I see your eyeballs fire up. So we will end right there. [Laughter.]

I thank you very much and appreciate your being here. And thank you for your very helpful testimony. And thank you so much, all of you.

The next panel is a labor panel, consisting of Stephanie Bower of the United Farmworkers; Richard J. Gowen, vice president of the Institute of Electronics Engineers; and Jesus Romo, director of the Farmworker Rights Organization.

I see unannounced on the agenda but a very fine attorney and counselor, David Carliner. Are you here assisting?

Mr. CARLINER. I am here assisting Mr. Gowen.

Senator SIMPSON. I certainly will accept that. It is nice to have you here, David.

So, if you would proceed in the order that is listed.

STATEMENT OF STEPHANIE BOWER, UNITED FARMWORKERS

Ms. BOWER. Mr. Chairman, I would like to thank you on behalf of the United Farmworkers of America, AFL-CIO, for the opportunity to inform the subcommittee that to approve any temporary worker program of any kind, including the H-2 program as it now exists in practice, would according to our President Cesar Chavez harm all workers, documented and undocumented, because such a plan would be used to delay and defeat organizing efforts among the workers, and without organizational strength workers have no defense against mistreatment.

Now, I am not going to go into the bracero program because I know that it has been brought up both at the guest worker hearings and at the sanction hearings; only to say that the use of braceros as strikebreakers was a very big problem to us. And it was not until after the bracero program ended that we were able to organize workers in California.

H-2 PROGRAM

We have had many experiences involving union busting and hiring undocumented workers when domestic workers were clearly available. In the interest of time, I will just talk about the H-2's.

I submitted for the record newspaper articles and work contracts signed by the Department of Labor in 1978 in Presidio, Tex. Unemployment in this part of Texas at the time in the Rio Grande Valley was at that time the highest in the State. The United Farmworkers submitted 1,700 names, addresses, and telephone numbers of domestic farmworkers who were ready to pick crops in the Presidio area. None of these workers were contacted and those who showed up on their own were denied work.

Instead, Mexican H-2 workers were hired. The H-2 workers were hired by the Griffin and Brand Co. Subsequently the H-2 workers went on strike because the company refused to pay them $2.97 an hour, refused to pay their transportation costs of 5-cents per mile, and refused to give the workers their $5 housing allotments. No toilet facilities were provided and they had no cold drinking water in 100° heat.

There are a couple of other cases in California, in San Diego County, where domestic workers were actually fired in favor of illegal workers. But they were not specifically H-2 workers. But I have also submitted that for the testimony.

On the east coast we have had many instances where domestic workers, as Mr. Semler and the others have testified, being fired in favor of Caribbean workers during the apple harvest. In 1975 the UFW here housed Puerto Rican farmworkers who were denied work and could not get home to Puerto Rico.

Within the past month, the United Farmworkers received a letter from the Philippines from a priest there informing us that Filipinos are being recruited right now to go to the Salinas Valley area of California. Attempts like this have been made in the past, and we are very concerned that this is again an attempt to hurt our union. And we know that in the Salinas Valley area we can find domestic workers.

EMPLOYERS RESIST PROTECTIVE LEGISLATION

Senator Humphrey in 1976 told the Senate:

> Organized labor in this country has stood for defense of this nation, a strong defense. Organized labor has stood for the health care of the American people. It stood for workman's compensation. It has stood for unemployment compensation, and it fought for social security. The standard of living in this country for the unorganized worker is due in large measure because of the efforts of organized labor.

All of the things that our beloved Senator spoke of are the things which the agricultural employers have destroyed for the American farmworkers. U.S. agribusiness, which is increasingly dominated by large corporations and conglomerates, is ever resisting the right of farmworkers to be covered by unemployment benefits, workman's compensation, social legislation and the right of farmworker children to get a decent education.

We believe that the American farmworker should be hired and should be allowed to benefit from the rights and protections of the laws of this country.

Since I last testified before this subcommittee on September 30, unemployment has risen a whole percentage point. Unemployment is now up to 8 percent, with 8½ million Americans unemployed, the largest number since 1939. This number has increased by 1 million in the past 3 months alone.

Unemployment among the minorities has reached 15½ percent, and our experience has been that it is about 50 percent among the Nation's minority youths in rural areas. These teenagers should be able to be put to work in their own surroundings at a decent wage and not have to migrate to the cities, where there are already too many unemployed workers. If they could get jobs, there would be less of them in trouble for lack of better things to do.

We feel that the U.S. Government should have an incentive program, spending its resources to recruit nationwide domestic workers at the prevailing wage that exists in that area. The United Farmworkers would concur with the Select Commission on Immigration and Refugee Policy that the application process should be streamlined, meaning that there should be more of an effort made to recruit nationwide and it should be done, as the people before me have gone into: Remove incentives to employers, require employers to pay FICA and unemployment insurance to H-2's, maintain certification by the Department of Labor. The Government, employers, and unions should cooperate to end dependence of any industry on H-2.

And I would like the subcommittee to keep in mind our union's history. We believe that domestic farmworkers are ready to work and that unscrupulous agribusiness employers should not be allowed to recruit foreign workers as rented slaves. Domestic workers meaningfully engaged in farm labor, earning a decent wage and living a fruitful life, will benefit the whole of American society.

Thank you.

Senator SIMPSON. Thank you very much. We appreciate that.

[The prepared statement of Ms. Bower follows:]

PREPARED STATEMENT OF STEPHANIE BOWER

Mr. Chairman, I would like to thank you on behalf of the United Farm Workers of America, AFL-CIO for the opportunity to inform this subcommittee that to approve any temporary worker program of any kind, including the existing H 2 program would, according to our President Cesar Chavez, "... harm all workers, documented and undocumented; because such a plan will be used to delay and defeat organizing efforts among the workers - and without organizational strength, workers have no defense against mistreatment." I would also like to state that our union does not necessarily share the views of others on this panel.

BRACERO PROGRAM

In order to paint for you a total picture of how an expanded H 2 program would at this time harm domestic workers and severly damage the organizing efforts of our Union, we need to look at the Bracero Program (Public Law 78), from which growers in the Southwest benefitted - from the Second World War until 1964. The Bracero Program had the following four effects:

(1) the decline of farm labor wages, as grower associations set rates in advance, then announced a "labor shortage" when domestic workers refused to work for these low wages;
(2) the displacement of domestic workers because growers preferred foreign workers - who would be legally and automatically deported at the end of the season;
(3) the virtual enslavement of braceros who seldom received the promised wages or conditions, who were dependent upon the company for food and transportation, and who often were forced to buy from company stores or labor contractors who ran the labor camps;
(4) the use of braceros as strikebreakers:

In 1947-49 - Government officials escort Mexican contract laborers through picket lines at the DiGiorgio Fruit Corp., thus breaking a strike by domestic farm workers.

In 1948 - Use of Braceros to break a strike in the Asparagus fields in Stockton, Ca.

In 1950 - 2,000 Braceros are brought to work by Highway Patrolmen and security guards in a successful effort to break the strike of 3,400 San Joaquin Valley tomato workers.

In 1951-52 - Melon strikes by Imperial Valley, Ca. farm workers are broken by the importation of braceros.

In 1956 - The National Agricultural Workers Union collapses as guest workers are used repeatedly to break the strikes of tomato, asparagus and carrot workers.

In 1959 - Braceros are used as strikebreakers in the peach fields in Stockton, California.

In 1960 - The Agricultural Workers Organizing Committee loses a strike at the Cochran Tomato Company when braceros are brought in.

In 1961 - A strike by Imperial Valley lettuce workers is broken by braceros.

UFW EXPERIENCE SINCE THE END OF THE BRACERO PROGRAM UNDOCUMENTED WORKERS AND H 2's

It was only after the Bracero Program ended in 1964 that farm workers were able to organize their own union and sign contracts. Now that unionization is more widespread, growers are more intent than ever on finding a docile, controllable workforce.

We have had many experiences involving Union Busting and hiring H 2's or undocumented workers when domestic workers were clearly available.

I would like to submit for the record newspaper articles and work contracts signed by the Department of Labor, 1978 in Presidio, Texas. Unemployment in this part of Texas, the Rio Grande Valley, was at that time the highest in the State. The United Farm Workers submitted 1700 names, addresses and telephone numbers of domestic farm workers who were ready to pick crops in the Presidio area. None of these workers were contacted and those who showed up on their own were denied work. Instead Mexican H 2 workers were hired.

The H 2 workers were hired by the Griffin and Brand Company. Subsequently the H 2 workers went on strike because the Company refused to pay them $2.97 per hour; refused to pay their transportation costs (5 cents per mile) and refused to give the workers their $5 housing allotments. No toilet facilities were provided and they had no cold drinking water in the 100 degree heat.

Two other cases involved the firing of legal workers in favor of undocumented workers in San Diego County:

> Kawano vs. UFW - The United Farm Workers held an organizing campaign and had also held an election which we had won. The workers were all fired. The UFW proceded to file suit and win the case. The Company appealed to the Supreme Court and lost. The California ALRB is presently trying to determine the amount of back wages owed the farm workers. I have requested the ALRB decision on this case.

Ukegawa vs. UFW - In this instance the workers were fired before the union had a chance to hold an election. This travesty of justice has been aired on National Public Television.

On the East Coast we have had many instances of domestic workers being fired in favor of Caribbean workers during the apple harvests. In 1975, the UFW housed Puerto Rican farm workers in Washington D.C. who were denied work and could not get home.

Within the past month the United Farm Workers received a letter from the Philippines informing us that Filipinos are being recruited to go to the Salinas Valley area of California. Attempts like this have been made in the past to destroy our organizing efforts in the Salinas valley.

UNSCRUPULOUS RACIST EMPLOYERS

The United Farm Workers of America believes that the same growers who exploited workers during the days of the Bracero Program have since become very wealthy. These same growers would use their wealth and power to attempt to have the President do their bidding by reinstituting slavery. While they were trying to prevent unionization in previous years, we believe these growers are now trying to bust the Union.

In 1976, Senator Hubert Humphrey told the U.S. Senate, "Organized labor in this country has stood for defense of this nation, a strong defense. Organized labor has stood for the health care of the American people. It stood for Workman's Compensation. It stood for Unemployment Compensation. It fought for Social Security. The standard of living in this country for the unorganized worker is due in a large measure because of the efforts of organized labor."

All these things that the beloved Senator spoke of are those things which the agricultural employers would destroy for the American farm worker. U.S. agribusiness which is increasingly dominated by large corporations and conglomerates is ever resisting the right of farm workers to be covered by unemployment benefits, workman's compensation, social legislation, and the right of farm worker children to get a decent education.

The United Farm Workers Union believes that the American farm worker should be hired and should be allowed to benefit from the rights and protections of the laws of this country.

UNEMPLOYMENT

Since I last testified before this Subcommittee on September 30, 1981, unemployment has risen a percentage point. Unemployment is now up to 8% with eight and one-half million Americans unemployed, the largest number since 1939. This number has increased by one million in the past three months alone.

Unemployment among minorities has reached fifteen and one-half percent and our experience has been that it is about 50% among the nations Minority youths in rural areas. These teenagers should be able to be put to work in their own surroundings at a decent wage and not have to migrate to the cities where there are already too many unemployed workers. If they could get jobs, there would be less of them in trouble for lack of better things to do.

In 1893, Samuel Gompers, known as the father of organized labor said, "What does labor want? We want more school houses and less jails, more books and less guns, more learning and less vice, more justice and less revenge. ---We want more---opportunities to cultivate our better nature."

In other words, today we might coin a very similar phrase --- WE WANT JOBS --- NOT JAILS.

The United Farm Workers of America pays decent wages, has Cost of Living Allowances, the Robert F. Kennedy Medical Plan, pension plan and pesticide protection. Where there is no union we know tha domestic farm workers would work for minimum wage.

WHAT DOES THE UFW of AMERICA, AFL-CIO SUGGEST THAT THE GOVERNMENT DO

The U.S. Govenment should have an intensive program - spending it's resources to recruit domestic workers at the prevailing wage that exists in that area.

The United Farm Workers would concur with the Select Commission on Immigration and Refugee Policy that:

1) The application process should be streamlined.
2) Remove incentives to employers - Require employers to pay FICA and unemployment insurance to H2's. Maintain certification by DOL

3) Government, employers and Unions should cooperate to end dependence of any industry on H2.

The Subcommittee ought to keep in mind, however, our Union's history and believe that domestic farm workers are ready to work, and that unscrupulous agribusiness employers should not be allowed to recruit foreign slaves. Domestic workers meaningfully engaged in farm labor, earning a decent wage, and living a fruitful life will benefit the whole of American Society.

Page 18, Section 1 Houston Chronicle Saturday, May 27, 1978

U.S. agencies ordered to admit 400 Mexicans for Presidio harvest

BY JOHN KLING
Chronicle Staff

A federal district judge in El Paso Friday ordered two federal agencies to allow about 400 Mexican nationals into the Presidio area to harvest onions and cantaloupes.

U.S. District Judge William S. Sessions of El Paso issued a preliminary injunction against the Department of Labor and the Immigration and Naturalization Service, ordering them to clear the workers' entry.

The Presidio Valley Growers Association argued that it could not hire enough U.S. citizens or resident aliens to harvest onions and the cantaloupe crop.

Last year, after intervention by President Carter, the INS issued an emergency order permitting about 800 Mexican nationals to work in the area after growers claimed they could not hire enough farmworkers. They said their crops were rotting in the fields.

A spokesman for Carter said last year that the emergency order would not be repeated this year.

The special permits for 661 of the Mexican workers expired last November, while 148 were allowed to stay until June. This year the growers association went directly to court for the injunction.

The injunction orders the Labor Department to officially state the need for the workers and orders the INS to permit entry until the crops are harvested. The agencies began processing workers during the week under provisions of a temporary restraining order issued by Sessions Thursday.

The emergency order last year was widely criticized by farm worker organizations and others who said there were more than enough farm workers living in the Valley to harvest the crops. They said they feared it would lead to a renewed "Bracero" program, which allowed foreign harvesters to work in the U.S. during the 1950s and '60s.

Farm labor leaders say the program allowed broad exploitation of the workers, many of whom were paid well below the current minimum wage and lived in substandard housing.

Carter and Labor Secretary Ray Marshall are strongly opposed to a new "Bracero" program.

An aide to Leonel Castillo, INS commissioner, said the agency was not aware of any move to import workers until the growers association suit was filed in district court.

Castillo was visiting Austin and could not be reached for comment.

Rebecca Flores Harrington, director of the United Farm Workers of America service center in San Juan, Hidalgo County, said Friday there is absolutely no need to import workers when the Valley has the highest rate of unemployment in the state.

She said the UFW had gathered [illegible] workers ready to pick crops in the Presidio area. She said the growers there prefer foreign labor because they are more easily exploited and do not complain about poor working conditions and lower wages.

Members of the UFW were in Houston Friday to drum up support for their organizing efforts in the Valley and to announce plans for a melon strike and produce boycott.

The UFW sought support from several Mexican-American and church groups, including the Galveston-Houston Catholic Diocese, the League of United Latin American Citizens and the Political Association of Spanish-Speaking Organizations.

UFW supporters last week ended a nearly three-month strike of onion fields operated by Griffin and Brand of McAllen Inc., one of the largest growers in the lower Rio Grande Valley.

Ms. Harrington said the group will begin picketing Griffin and Brand melon fields next week and is planning a campaign to boycott Griffin and Brand products similar to the one organized against California grape and lettuce growers.

Ms. Harrington said about 2,000 of the Valley's estimated 100,000 migrants actively supported the onion strike. She admitted participation was not 100 percent among those who normally harvest onions, but said the strike was successful in gaining wage increases and better working conditions, such as toilets in some fields.

Othal Brand, chief executive of the company and mayor of McAllen, denied the strike had any effect. He said a few pickets did show up at his fields but that the crop was harvested without disruptions.

He said his melons are already being harvested without any problems.

Eight farm workers were arrested during the strike and subsequently acquitted on charges of criminal trespass. The eight are suing Brand for about $730,000 for allegedly imprisoning them against their wills, denying them work because of their union activities and for assault and battery.

Ms. Harrington said the primary issue is gaining a decent wage for farm laborers who now earn at least the minimum wage of $2.65 an hour. The current average annual income for a migrant family is $2,500, she said.

SOUTH TEXAS

Cloudy nights and partly cloudy days continuing through Sunday. Scattered afternoon and evening thundershowers in Hill Country. Widely scattered thunderstorms elsewhere. Little temperature change. Lows tonight upper 70s along the immediate coast and upper 60s to mid 70s elsewhere. Highs today and Sunday low 80s along the coast and mid 80s to low 90s elsewhere.

U.S. DEPARTMENT OF LABOR • MANPOWER ADMINISTRATION

CLEARANCE ORDER
RURAL MANPOWER JOB OFFER

1. Industry Code: 0161

2. ESARS Order Number: 756534

3. Occupational Title and Code: Farmworker, General 421.683010

4. Employer's Name and Address (Number, Street, City, State, and ZIP Code)

Presidio Valley Farmers Association
Bill Bishop, President
P.O. Box 1297, Presidio, Tx. 79845

5. Period of Employment: From 5-12-78 To 5-12-79

6. Clearance Order Issue Date: 5-12-78

Job Offer Expiration Date: 5-11-79

7. Crew Leader's Name and Address

Social Security Number

Home Phone

Leader's Functions:

	YES	NO
Supervises	☐	☒
Transports	☐	☒
Pays	☐	☒
Assumes OASI	☐	☒

8. Wage Rates, Special Pay, Information and Deductions

All work will be paid at the rate of $2.97 per hour.

$5.00 a day per worker paid in lieu of housing.

9. No. Normal Hours of Work

Per Day: 8
Per Week: 48
Normal work days (circle): S M T W T F

10. No. & Type of Workers Needed

Total Number: 70
No. Individual:
No. Family:
No. Group:

11. Job Specifications

70 workers from 5-12-78 until 5-11-79 to perform general farm work, hoeing, irrigating, and to drive tractors.

Forty hour work guaranteed for each two week work period. If any or all crops are lost because of an Act of God the Employer is not to be held liable for the completion of the contract or the continuance of the 40 hour guarantee for each two weeks of work.

12. Location of Job: Presidio, Texas area

13. Board Arrangements

14. Location and Description of Housing: Employer has no housing available and none can be furnished. Application has been made for Federal Grant & Loan for housing approx. 11-1-77 Limited housing available in area.

Number and Capacity of Housing Units: Barracks / Family Units / Single Rooms

Housing meets Federal or higher State standards and is approved for occupancy by the following number of persons.

15. Referral Instructions: Contact Mr. Bishop at Valley Packing Shed, or P.O. Box 1297, Presidio, Tx. 79845 or phone 915-229-3632 or Mr. Spencer at 915-229-3668

16. Collect Calls Accepted

	YES	NO
By Employer	☐	☐
By Order Holding Office	☐	☐

17. Transportation Arrangements

18. Distribution of Clearance Order: Interstate

19. Address of Order Holding Office

Texas Employment Commission
P.O. Box 549, Pecos, Texas 79772

Name of Agency Representative: C.E. Carlson

Telephone: 915-445-5429

20. EMPLOYER CERTIFICATION This Job Offer describes the terms and conditions of employment offered by me: Presidio Valley Farmers Ass'n.

Signature: B. J. Bishop

Title: President

Replaces Form ES 369.1 which is obsolete

MA 7-90
Aug 1973

U.S. DEPARTMENT OF LABOR
Manpower Administration

CLEARANCE MEMORANDUM FOR RURAL MANPOWER

1. TO: *(Name and Address)*

2. FROM: *(Name and Address of Local Office)*
Texas Employment Commission
P.O. Box 549
Pecos, Texas 79772

3. ESARS ORDER NUMBER
756534

4. DATE OF ISSUE
5-12-78

5. EMPLOYER
Presidio Valley Farmers Ass'n
P.O. Box 1797, Presidio, Tx. 79845

6. DISTRIBUTION
Interstate

7. Please note the following concerning the above request.

Employer guarantees each worker the opportunity for employment for 3/4 of the work days of the total period during which any work contract that the employer or his representatives have entered into, is in effect.

Employer will furnish on the job insurance at no cost to worker. Employer will see that off job insurance is provided at worker's expense.

8. BY: *(Signature)*

TITLE
U.S. Employment Interviewer II

DATE
5-12-78

Replaces Form ES-383, which is obsolete.

MA 7-95
Aug. 1973

U.S. DEPARTMENT OF LABOR
Manpower Administration

CLEARANCE MEMORANDUM FOR RURAL MANPOWER

1. TO: *(Name and Address)*

3. ESARS ORDER NUMBER
756534
756533

4. DATE OF ISSUE
5-12-78

5. EMPLOYER
Presidio Valley Farmers Association

2. FROM: *(Name and Address of Local Office)*
Texas Employment Commission
TEC Building
Austin, Texas 78778

6. DISTRIBUTION
Statewide

7. Please note the following concerning the above request.

Item 17 Transportation arrangements should read
5¢ per mile not to exceed $15.00 to be refunded to worker after two complete weeks of work.
Note: Wage Change

8. BY. *(Signature)*

TITLE
Asst. Chief of Placement

DATE
5-16-78

Replaces Form ES 383, which is obsolete.

MA 7-95
Aug. 1972

AGRICULTURAL JOB OFFER ATTACHMENT

A Copy of This Statement is to be Attached to Each
Agricultural Interstate and Intrastate Job Offer

In view of the statutorily established basic function of the Employment Service as a no fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Any job order accepted or recruited upon by the ES does not constitute a contractual job offer to which the ETA or a State agency is in any way a party.

I hereby assure that the working conditions of my order comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment related laws: and that I will provide a copy of the work contract to the worker in English or in Spanish, if the worker is not fluent or literate in English.

This job offer describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job.

2-15-78

Employer Signature　　Date

MA 7-90A (477)

Judge OKs Restraining Order Against Strikers

By GUY SULLIVAN
Staff Writer

PRESIDIO — A temporary restraining order requested by Valley Farms, Inc., was granted Friday morning by 83rd District Judge George Thurmond of Del Rio to prevent striking melon pickers from committing any illegal acts.

Judge Thurmond was acting as visiting judge in the absence of 83rd District Judge William Earney.

The motion requesting the order reportedly claims that growers in the Presidio Valley were losing $1,000 per day as a result of the strike activity by a handful of UFW organizers and sympathizers.

Named in the order are the UFW and others including union organizers Jose I. Arias and Jose Saldana. The document says those named are to refrain from trespassing, picketing on the plaintiff's property or interrupting the harvest by the use of abusive, insultive and obscene language.

"We haven't done anything wrong," said Saldana. "Nor do we plan to do so, so I don't see why they're bothering the courts with this type of order. It's just more harrassment."

See Judge, Page 6a

★ JUDGE

(From Page 1)

A hearing is set for 10 a.m., July 10 in Marfa's 83rd District Court reportedly to show cause why the order should not be permanent.

The order says picketing on Valley Farms' property or property in which the same corporation maintains control, is specifically prohibited.

Other illegal acts prohibited by the order include the cutting or slashing of tires, blocking exits and entrances of fields and use of objects which would physically damage motor vehicles.

Harrington claimed the UFW has "a number of organizers in the fields," but declined to say exactly how many. He said there is continuous picketing on the outside of fields in the Presidio Valley and "people are talking it up in the fields also."

He admitted, when he was reached "It's real slow now because it rained all last night and this morning. So there's not that much harvesting going on. We (UFW) will probably be there another week."

Presidio Valley growers lost at least several hundred acres of honeydew melons and cantaloupes which were damaged because of hail and rain last week, said Othal Brand, of Brand and Griffin Co. a shipping firm,. He said the insurance companies paid 80 to 85 percent in losses on the crops. "Of course, that's still a substantial loss."

Brand also reported Spencer Farms lost a "great deal," as did Valley Farms, as a result of the summer storms. He admitted, however, a few fields escaped the hail, winds and rains which severely damaged the crops.

Growers in this West Texas region affiliated with the Presidio Valley Farmers Association are under investigation by the El Paso U.S. Attorney's Office for allegedly violating the terms of a U.S. Labor Department clearance order which stipulated that at least 430 Mexican national farm workers be paid $2.97 per hour.

In addition, members of the same agribusiness group are also being investigated by the same office for allegedly denying Americans the right to work in the Presidio Valley harvesting crops this season.

The allegation is contrary to a federal court order issued by El Paso's Judge William Sessions of the Western District Federal Court. His order stated that no American workers could be denied jobs in the same region.

Federal sources say no final determinations have yet been made on these allegations.

Page 6-B THE EL PASO TIMES, Wednesday, June 28, 1978

Picker-Grower Confrontation Sizzles; Five Jailed: Bond Termed Too High

By PAUL SWEENEY
Times Staff Writer

The hot summer's harvest of melons and onions has erupted into a fierce confrontation between pickers and growers in Presidio.

Five farmworkers who led a strike against what they say are substandard wages and bad working conditions remained in jail Tuesday for allegedly obstructing traffic.

Two of the five, Jose Saldana and Gilberto Jiminez, filed affidavits with the U.S. Labor Department here last week charging that employers denied them jobs picking melons that went to Mexicans — an alleged violation of a recent federal court ruling that growers may hire foreign workers only if they do not deprive Americans of jobs.

Rebecca Harrington, a spokeswoman for the United Farmworkers in San Juan, charged that the $1,000 bond set for the five UFW strikers was "ridiculously high for a traffic violation."

Marfa Sheriff Rick Thompson refused to discuss the arrests. Told that the arrest reports are normally public information, the young Marfa sheriff commented: "If you want to get that information then come on down and have a look."

According to Mrs. Harrington, the workers were arrested while they walked outside of fields in Presidio owned by Othal Brand, who is also mayor of McAllen. "They were out on the public road and they were talking to workers in the fields through their bullhorns," the UFW spokeswoman said.

She said that workers, many of them from Mexico, had staged a sitdown strike in the fields Tuesday, demanding that they get cold water while working in the intense, 100-degree heat. Mrs. Harrington said the workers also demanded that the growers pay them the $2.97 an hour wage guaranteed them in a recent federal court order.

At the same time, Charles Perez, district director of the Immigration and Naturalization Service, told The Times that border bridge inspectors in the area have relayed reports to him that trucks coming into the fields have had their tires slashed by strikers.

Bill Bishop, president of the Presidio Valley Growers Association, refused to comment.

Meanwhile, officials with the U.S. attorney's office here said they are seeking guidance from Washington about whether to take court action on the growers' alleged violations of the federal court order.

Joe Wysong, the assistant area director for the Labor Department's wage and hour division in El Paso, said his office has no jurisdiction over the "adverse effect wage rate" which growers are required to pay.

Wysong said his office only had authority to see that the $2.15 an hour wage rate is being met. "And it looks as if it is," he said.

But Monday Judge William S. Sessions ruled against Presidio growers who had asked that they only be required to meet the $2.65-an-hour wage rate, and not the adverse rate.

According to Wysong, the higher rate should be monitored by the Labor Department's Employer Training Administration in Dallas.

But William S. Harris, who heads the Dallas ETA office, insisted that while he was not responsible for seeing that the growers hired at the proper rate, it was up to the wage and hour division to keep tabs on ongoing compliance. He also said he did not know that affidavits were filed in El Paso last week alledging violations of the federal court order.

Asked about the discrepancy, Wysong said later: "Frankly there is some confusion. This adverse rate is a pretty new thing."

PRESS RELEASE

UNITED FARM WORKERS of AMERICA AFL-CIO
TEXAS PROJECT
P.O. Box 1493 • San Juan, Texas 78589 • 512-787-2233

FOR IMMEDIATE RELEASE
JUNE 29, 1978

FOR FURTHER INFORMATION
CONTACT: PETER ELIKANN

FIRED FARM WORKER STRIKERS TO JOIN FEDERAL LABOR DEPT. IN CONTEMPT ACTION AGAINST GRIFFIN AND BRAND:
Another Massive Sitdown Strike To Be Held Today

Two farm workers who led a sit down strike in the Griffin and Brand fields in Presidio, Texas earlier this week were fired Wednesday and they plan to join the federal Department of Justice in a contempt action against Griffin and Brand.

Another massive sit down strike is expected today.

The U.S. Attorney from El Paso Reusch filed the contempt motion because Griffin and Brand broke a contract with the Mexican farm workers they hired to work in Presidio.

Last month, Griffin and Brand petitioned the U.S. Department of Labor and the office of Immigration and Naturalization Services for permission to hire Mexicans. Griffin and Brand claimed that they could get no American workers to pick melons in their fields.

But 150 Mexican workers hired by the company conducted a sit down strike Monday because Griffin and Brand failed to pay them $2.97 an hour, refused to pay their five cents a mile transportation stipend and refused to give them their $5 housing allotments, all items which were guaranteed in their contract. No toilet facilities or cold drinking water were provided for them either.

Ther two fired workers are Melquiades Lara and Jose Zuniga of Ojinaga, Mexico.

Five United Farm Worker Union members were arrested Monday.

-30-

Possible Farm Work Violations Probed

By GUY SULLIVAN
Staff Writer

PRESIDIO — The El Paso U.S. Attorney's Office is investigating alleged violations of a Department of Labor work contract and purported violations of a federal court order affecting both American and Mexican national farm workers in the Presidio Valley, a government official confirmed Wednesday.

Assistant U.S. Attorney Janet Ruesch told the Standard that she is investigating allegations that the Presidio Valley Farmers Association denied American farmworkers jobs during the current melon harvest season.

Bill Bishop, the farmers association president, declined comment on the matter Wednesday. Bishop's ranch was the scene of a protest of the alleged contract violations. Othal Brand, owner of Brand and Griffin Co., which owns farmland in the Presidio Valley, was unavailable for comment.

Ms. Ruesch also said she is investigating allegations that these same growers violated the terms of a federal work contract by not paying farmhands the amount per hour stipulated on the agreement between the DOL and the growers.

The first charge is contrary to a court order issued in early May by Judge Williams Sessions of the Western District Federal Court which allowed 430 Mexican national farm workers into the country to harvest the Presidio Valley melon crop. This order also stipulated that no American workers could be denied jobs in the same region.

"Part of the court's order was that farmers must not deny American workers jobs," said the assistant U.S. attorney.

"The Presidio Valley Farmers Association had not complied with all the requirements they were supposed to in order to certify the need for these Mexican workers," Ms. Ruesch explained. "Because the crops were going to rot in the fields, the judge ordered the 430 workers be allowed into the country."

She reported U.S. Labor Department officials took signed affidavits from the American workers last week. "These workers had been sent to the Presidio Valley by the Texas Employment Commission," explained Ms. Ruesch.

She also said her office is now investigating allegations brought to her attention by the Americans — all reportedly United Farm Workers Union (UFW) organizers — that the Presidio Valley Farmers Association is in violation of a DOL work contract calling for 430 Mexican national farm workers to harvest crops in the Presidio Valley this season.

The allegations came to her office through the El Paso Legal Aid Society, which, she said, was approached by the American workers involved.

The UFW alleges that the Presidio Valley Farmers Association is not paying the 430 farm workers the $2.97 per hour as called for in the contract, but only $2.65 per hour. The union also charges growers with not providing cold water to workers in the fields. Additionally, the UFW claims that the farmhands are only allowed to work

See PRESIDIO, Page 12A

SAN ANGELO STANDARD
Thursday, June 29, 1978— 1A

SAN ANGELO STANDARD—Thursday, June 29, 1978—12A

*PRESIDIO

(From Page 1)

five hours per day.

The contract between the DOL and the Presidio Valley Farmers Association reportedly says that workers should be paid $2.97 per hour for a 40 to 60 hour week; provides $5 per day per worker in housing allowance and says that each worker is eligible for up to $35 on a one-time only basis for transportation to and from the place of work.

On Monday 130 of these fieldhands staged a sit-down strike from 10 a.m. until 3 p.m., on a field owned by Bishop, at the encouragement of the UFW organizers, in order to seek compliance of the DOL work contract, according to a union spokesperson.

The same day Presidio County Sheriff's deputies arrested five UFW organizers for allegedly "obstructing traffic" while on a public road outside where the farm workers were staging their protest.

The five were released at noon Tuesday on $1,000 bond each after appearing before Presidio Peace Justice Antonio Acosta, said a union spokesperson.

Sheriff's deputies confirmed the arrests this morning. No names were released.

"Our people will continue to put pressure on the growers for breaking this federal labor contract," said Rebecca Harrington, a UFW spokesperson. "We want the growers to live up to this contract."

THE EL PASO TIMES, Friday, June 30, 1978 Page 7-A

Law Enforcers Pressured To Take Sides In Presidio

BY PAUL SWEENEY
Times Staff Writer

PRESIDIO — Earlier this week when field hands, many of whom were Mexican nationals, sat down in the cantaloupe fields around this West Texas town, Douglas Keim, area supervisor for the Immigration and Naturalization Service, says he got a telephone call.

On the phone was Terry Bishop, whose father is president of the Presidio Valley Growers Association, and whose family owns the fields where the sitdown strike was in progress.

"Bishop's son said he had some agricultural workers sitting down in the fields, and he wanted to know if we could do anything about it," Keim said. "Of course I told him we don't get involved in these things . . . that we're not going to do anything about it, and he said, 'Fine.' "

While nothing came of the incident, it indicates that both the law and law enforcement agencies are being pressured to take sides in the farm labor disputes troubling this area. The pressure comes from representatives of the United Farm Workers as well as from agribusinessmen.

UFW attorney Jim Harrington, present during the Times' interview with Keim, later charged that big growers want to manipulate the law for their own purposes.

"The growers think they have the power to try to keep people out of the country if they want," Bishop said.

Earlier this week, when five UFW members were arrested for "blocking traffic" outside the Bishop fields, it cost them $1,000 apiece in bond to obtain their release on the Class "B" misdemeanor.

a Times analysis

The laborers have some weapons in their legal arsenal too. But the growers seem to be having the best of it. At least their crops are being picked.

The farm workers are claiming that their legal rights are being violated. At an outdoor meeting in a Presidio park Wednesday night, about 25 workers said they were angry that the terms of a federal court order were not being met.

In a ruling permitting importation of Mexican labor for the Presidio harvest, U.S. District Judge William Sessions ruled all workers, American and Mexican, should receive $2.97 an hour, $5 a day for housing, and five cents a mile in travel expenses up to a maximum of $33.

Yet workers claim the farmers have only been paying the usual minimum wage, $2.65 an hour, and they say they have yet to see a penny of housing or travel money.

But when the possible violations were pointed out to local Justice of the Peace Antonio Acosta, he shrugged his shoulders and said, "I'm not responsible for enforcing those laws. That's the Department of Labor."

Acosta was the magistrate who set bail at $1,000 for the five UFW members who blocked traffic.

The legal showdown seems to be between local authorities like Acosta and sheriff's officers, who protect the legal rights of growers, and the federal Department of Labor and the federal courts, who protect the workers. But in the fields of Presidio County, the feds are far away.

Those who must enforce the federal ruling will have to come hundreds of miles, and although Department of Labor investigators, for example, visit the area from time to time, they have not been around lately.

Two attorneys with Texas Rural Legal Air, Esther Chavez and David Hall, have been spending their time tracking down complaining workers and taking depositions, a slow and tedious process.

On Thursday they were planning to meet with attorneys for the growers, and carefully scrutinize wage and price records. But that meeting will be delayed. The growers' attorneys missed their appointment. The meeting has been reset for Friday.

For the Mexican laborers there is the added problem of finding legal protection in a foreign country. Many of them have turned to the Mexican consul in Presidio, Hipolito Santillan-Acosta.

"We have to be vigilant that they (growers) are meeting minimum wage, and providing proper working conditions," Santillan-Acosta said.

And yet Acosta admitted that he had not seen the federal court order. And although he was sure that the workers were earning $2.65 an hour, he didn't know about the court ordered wage of $2.97.

The final legal skirmish may well be fought in Sessions' courtroom instead of the Presidio cantaloupe fields.

Farmhands Claim Jobs Denied Them

BY PAUL SWEENEY
Times Staff Writer

A group of farmworkers from the Rio Grande Valley filed complaints with the federal Labor Department's wage and hour division in El Paso, charging that Presidio farmers denied them jobs that went to Mexican laborers who will work for substandard wages.

Jose Saldana

The men say, moreover, that they were harassed by deputy sheriffs in the area when they pressed for the jobs. The seven farmworkers all carried forms showing that they were referred to the jobs through the Texas Employment Commission.

Under a federal court order, the Presidio farmers were permitted to hire Mexican field hands providing that they did not deprive American workers of the jobs. Under the court order, the farmers are required to pay the onion and cantaloupe pickers $2.97 an hour, plus $5 a day each for housing.

Jose Saldana, a spokesman for the group, charged that the president of the Presidio Valley Growers Association, Bill Bishop, was the man responsible for turning them away.

The 35-year-old Saldana said he and his fellow American farmworkers arrived at Bishop's farm at 7 a.m. Monday and were made to wait until 9 a.m. while Mexican natives were assigned jobs in the fields.

Despite that the TEC "clearance orders" specified that the men should "perform harvest work in onions and cantaloupes," Saldana says that Bishop told them the only job he'd [illegible] sent us to the canal," Saldana said. "And then he told us to clean it.

"But the growers have machines to do this," the farm laborer went on. "And we explained that we came to work on the cantaloupes. We didn't want to work on this kind of a job."

According to Saldana, Bishop accused the men of being "agitators," and "huelguistas" or strikers.

Saldana admits that he is a member of the United Farmworkers Union and said he would like to see union representation for field hands in Texas. But he said that he and his companions were after jobs and were willing to work.

He said the growers are taking advantage of Mexican labors. For example, Saldana said, he witnessed farmhands walking long distances to put cantaloupes in trucks. "The same thing happened in California," he said. "They want workers who won't say anything. The growers want men they can pay 50 cents an hour and can fire anytime they want."

After they declined to clean out the irrigation canals, Saldnana said, the men were told by Bishop: "We don't have too many cantaloupes. Why don't you come back next week.' "

When they finally left, they were "followed" by deputy sheriffs, Saldana said, adding: "They were putting a lot of pressure on us."

Larry Williams, a compliance officer with the Labor Department in El Paso, said only that he was on a "fact finding" assignment with the workers, but could say little else because of pending litigation.

The Labor Department currently has a federal suit pending against five farmers in the Presidio area charging them with failure to pay minimum wages to pickers, most of whom are "undocumented workers," or Mexican nationals, seeking recovery of $230,000 in back wages.

El Paso Times 6/30/78

PRESS RELEASE

UNITED FARM WORKERS of AMERICA AFL-CIO
TEXAS PROJECT
P.O. Box 1493 • San Juan, Texas 78589 • 512-787-2233

FOR IMMEDIATE RELEASE
JULY 1, 1978

FOR FURTHER INFORMATION CONTACT:
PETER ELIKANN

PRESIDIO GROWERS GET TEMPORARY RESTRAINING ORDER AGAINST STRIKING FARM WORKERS

A temporary restraining order requested by the Presidio Valley Farmers Association was granted Friday restraining striking melon pickers from committing any illegal acts.

"We haven't done anything illegal nor do we plan to so I don't see why they're bothering the courts with this type of order," United Farm Workers Union organizer Jose Saldana said. "It's just more harassment.

The order signed by Farmers Association Vice President Vernon Hill a Mission attorney, was granted by Judge George M. Thurmond after a week of strike activity by the melon pickers. The hearing will be July 10.

Will said the growers in Presidio were losing $1,000 a day, but earlier Othal Brand said the strike activity had no effect whatsoever on his melon fields in Presidio.

The strike activity began last Monday when 150 Mexican workers hired by Griffin and Brand conducted a sit down strike because Griffin and Brand refused to pay them $2.97 an hour, refused to pay their five cents a mile transportation stipend and refused to give them their $5 daily housing allotments, all items which were guaranteed in their contract. No toilet facilities or cold drinking water were provided for them either.

Five United Farm Worker union organizers were arrested that Monday for alleged traffic obstruction and later released on $1,000 bond each. UFW attorney Antonio Gomez said the $1,000 bond requested was extreme and exorbitant.

-MORE-upon him to furnish all records, photographs and other materials relating to the investigation into Lozano's death.

Additionally, Green said he met Thursday morning with U.S. Attorney Jamie

… in the case.

Sheriff Elton Faught was served with a subpoena in the early afternoon.

Meanwhile, federal officials continued to neither confirm nor deny that the Lozano case will be considered by the grand jury

whether these violations, if any, were cause of his death.

Lozano was arrested by sheriff's deputies Jan. 10 and died 12 days later in the county jail. Sheriff Faught initially termed the death a suicide.

Photo By Chad Pearling

lineman installed more power lines for the new Shanno. Hospital seen in the background.

Judge Makes Ruling On UFW Wage Hike

By GUY SULLIVAN
Staff Writer

PRESIDIO — While spokesmen for the United Farm Workers Union claim credit for a Monday wage increase benefiting at least 430 Mexican national farm workers, Othal Brand of Brand and Griffin Co. says a federal judge's ruling is actually responsible.

Reached Thursday night in McAllen, Brand told the Standard, "All I can tell you is that there was a decision pending and Judge William Sessions of the Western Federal District in El Paso said Monday that people will be paid the $2.97 per hour instead of the federal minimum wage of $2.65."

Brand indicated the U.S. Labor Department declared that the "adverse" rate applied in this case. "Of course that ruling may be appealed."

Brand said there "was some question in the farmer's minds whether the $2.97 adverse rate or the $2.65 per hour minimum wage applied. Monday they were told that the adverse rate did apply."

Brand added that the farmers had taken the DOL to court over the matter and Judge Sessions issued the pay rate ruling after a hearing Monday.

The ruling affects 430 Mexican national farm workers, especially allowed into the Presidio Valley to harvest the crops as a result of a prior federal court ruling issued because the judge said the crops would rot without the labor force.

Jim Harrington, a UFW attorney assisting the union's organizing drive in Presidio, said, "Our presence here has made sure that everybody, both migrants and Mexican national farm workers, made $2.65 per hour even though they're supposed to be paid $2.97 per hour, according to Judge Sessions' order in El Paso.

Harrington said "Even $2.65 per hour is a vast improvement over last year. The U.S. Department of Labor figured last year that people harvesting crops in this valley were only earning about $1.50 per hour, instead of the then minimum wage of $2.30 per hour as prescribed by law. They were making substantially less than the minimum wage."

Harrington also claimed the UFW's presence in the Presidio Valley this harvest season has been responsible for the installation of portable toilets in the fields for workers and the availability of drinking water for the farmhands.

The union lawyer said one of the UFWs "main targets" has been the Brand and Griffin Co. "because they are one of the wealthiest corporations and one of the firms wich treats the workers worst."

Othal Brand, of Brand and Griffin Co. said "What you've got down in the Presidio Valley right now is a small group of professional agitators who have caused no damage because all they do is put out news releases. It's no union because they don't have one member and they haven't done a

See Judge, Page 14A

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'Hogan's Heroes' Star Bob Crane Found Dead

18 Months

Union men arrested in Presidio

By The Associated Press

PRESIDIO — Five union organizers for the United Farm Workers union were arrested Monday morning outside a cantaloupe field where two truck drivers said they were being kept from driving away with their loaded trucks.

They were charged with obstruction of traffic [illegible] the Presidio County Jail at Marfa. Justice of the Peace Antonio Acosta of Presidio [illegible] bond at $1,000 each.

Peter Elikann, a legal intern at the UFW's office in San Juan, said the arrests came about a half hour after 150 workers walked off the field complaining of 110-degree heat and lack of drinking water [illegible] facilities.

He said Griffin & Brand, owner of the field, was paying the workers $2.65 an hour instead of the $2.97 an hour contract price and the company had not paid a $5-a-day housing allotment.

Presidio County Sheriff Rick Thompson confirmed the five union men were in jail, but refused to comment further.

Elikann said the five who were arrested were the only union personnel at the field, but said he did not know why they were the only ones arrested. He said they had been gathering cantaloupes with other workers in an attempt to get to know them better.

Acosta said the two truck drivers pointed the five out as the ones who had prevented their trucks from leaving after they drove through a gate on private prop ty. Acosta said the five had b in Presidio a week, holding meetings in a Catholic church speaking to the workers in field by a loud speaker syst The five were not employed Griffin & Brand, Acosta said.

The five who were jailed w identified as Jose Saldana, McAllen; Rodolfo Sanchez, McAllen; Juan Valdez, 46, Juan; Gilberto Jimeniz, 30, dalgo; and Juventino Fernand 45, Hidalgo.

Elikann called the $1,000 b placed on the men "absolut unbelievable for that kind of fense." Acosta defended it, s ing he bases the bond on the m imum fine, which is $1,000 fo class B misdemeanor.

The Monitor
McAllen, Texas Tues., June 27, '78 3A

UFW Continues West Texas Strike

PRESIDIO, Texas (UPI) — The United Farm Workers union will continue its strike of vegetable fields in remote west Texas until growers provide drinking water and adequate toilets, a UFW spokesman said.

Five UFW members jailed Monday on charges of obstructing traffic during a strike by melon and onion pickers were released today on bond.

"They posted bond," said sheriff Rick Thompson in Marfa. "Five people were accused of violating the law, five were arrested, five were put in jail, five bonded out and we know who all of them are."

The UFW, in its first concerted farm strike activity in Texas in recent years, claimed 150 workers — 100 of them Mexican aliens — walked off their jobs Monday, complaining of lack of water and toilet facilities as the temperature climbed above 100 degrees in the Texas Big Bend area.

"The workers were denied water and toilet facilities and the temperature was rising as high as 100," spokesman Greg Trevino said from the UFW's Texas headquarters at San Juan. "The grower also broke his contract to pay $2.97 an hour and paying just the $2.65 minimum wage."

Trevino said the workers had been harvesting melons and onions under such conditions for the past 10 days.

"One of the reasons they're treating the workers so bad is because they did not think the ones from Mexico would say anything," he said.

Jose Saldana, Rodolfo Sanchez, Gilberto Jimendez, Juan Valdez and Juventino Fernandez were arraigned and jailed until they posted cash bonds.

A UFW spokesman also alleged Griffin and Brand, headed by McAllen Mayor Orthal Brand and one of the Rio Grande Valley's largest growers and shippers, promised to pay the workers $2.97 an hour, but the field hands actually were being paid only the minimum wage of $2.65 an hour.

The UFW has maintained a Texas office since 1966, but in recent years has confined its activities to supporting union president Cesar Chavez's boycotts of California products. Chavez said recently he planned to step up his activities in Arizona and Texas.

Senator SIMPSON. Ms. Bower, please.

STATEMENT OF RICHARD J. GOWEN, VICE PRESIDENT FOR PROFESSIONAL ACTIVITIES, INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

Dr. GOWEN. Thank you, Mr. Chairman. I appreciate the opportunity to discuss with you the proposed changes in the Labor Certification Act. I am vice president for professional activities of the Institute of Electrical and Electronics Engineers, a transnational organization which is the world's largest technical, professional engineering society. I am also the vice president of the South Dakota School of Mines and Technology.

In my position with the IEEE, I represent the professional interests of some 215,000 members of our organization, 165,000 of whom reside in the United States, the remainder reside throughout the world. We are proud to number among our membership, the world's leading engineers and scientists, in the broad fields of modern electrotechnology and associated basic sciences.

In the United States, our profession has been subject to peaks and valleys, as shown in figure 1. My concern today is to focus on some of those fluctuations and the concern that the Certification Act has on such changes in employment. In particular, these fluctuations are dominated by defense and research and development spending changes.

While we fully endorse the concept of employing the best qualified person for any position, we cannot support practices, however, which allow perhaps less scrupulous employers to hire alien engineers at lower salaries than paid to similarly qualified U.S. engineers.

In my appearance today, I wish to bring this problem to your attention and present the view of my colleague professionals regarding a desirable approach to the problems we see in providing the United States with the most qualified engineering professionals possible.

We are concerned because we are becoming increasingly aware of the perhaps unnecessary and improper use of the H-2 category for professional engineers. We are deeply concerned that the removal of any existing controls on the entry of foreign engineers will increase the career instability of our citizen engineer work force. We also feel that engineers coming to this country temporarily, to smooth high peaks in demand, should be accorded compensation equal to that received by U.S. citizens for equal work being done.

We acknowledge that our Nation's industries must have the manpower needed to increase productivity and to maintain a strong technological lead. At this time, there is a growing awareness throughout our profession of the need to assist in retraining, educating, and improving our quality of engineering professionals throughout the United States and throughout the world.

We are also concerned that the loss of controls will undermine this program very severely. We favor retention of the present system requiring individual labor certification for aliens seeking approval of third and sixth preference immigration benefits. We share the view of those who feel that the labor certification process often is excessively slow, but that is a problem which can be resolved by changes I would like to suggest a little bit later.

We oppose the change which would authorize the Secretary of Labor to use labor market information without reference to the specific job opportunity for which certification is requested.

There are many classifications of engineers and each of these broad fields contains subspecialties. For example, IEEE membership is divided into 34 technical specialties, each of which contains subspecialties. The engineers skills are in some cases transferable from one specialty to another. Therefore, to make any blanket determination that there is a shortage in electrical engineering could easily be erroneous in specific categories.

Certification for specific job opportunities minimizes errors in labor market determinations. We have provided a table which identifies the changes in our profession over the last 2 years. This table shows that there has been a marked variability within the needs of engineers in various subspecialties. We find that there is a transfer back and forth between those subspecialties. We would like to see that encouraged.

We oppose the proposal that the Secretary of Labor may waive the requirement of a specific job offer in the case of an alien of exceptional ability. As previously indicated, we regard the requirement of individual job offers and individual certifications as a necessary attribute of the labor certification process. We ask that this be maintained for alien engineers being admitted as immigrants and as temporary workers.

Under no circumstances would it be appropriate to put determinations of alien certifications under the control of each State without reference to the national manpower supply. Engineers are a national resource and an individual State search would fail to keep up with the level of our opportunities.

We feel that creative solutions can be found to expedite certification processes within the IEEE, as well as within other organizations. There are salary surveys. The salary surveys provide a great deal of detailed information concerning geographic locations, the various types of engineers that are available.

We propose that guidelines be prepared both by INS and for the Department of Labor that would authorize immediate certification if the normal processes were followed, with advertisements and the position request, that would show that the person that would be hired for a position would receive salaries at the 75th percentile as reported in engineering salary surveys for a similar position. This is a significant commitment in salaries and would show that the person would be hired at an adequate level commensurate with qualifications. We also would recommend that there be an immediate disapproval of any certification for a person who is to be hired at less than the 25th percentile.

We wish to see that the best qualified persons are available, and thank you, sir, for allowing us to be with you.

Senator SIMPSON. Thank you, Dr. Gowen.

[The prepared statement of Dr. Gowen follows:]

PREPARED STATEMENT OF DR. RICHARD J. GOWEN

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to discuss with you the proposed changes in the Labor Certification Act. I am Vice-President for Professional Activities of the Institute of Electrical and Electronics Engineers, (IEEE), a transnational organization which is the world's largest technical, professional engineering society. Our members are experts in the research, design, development, and application of technology in the areas of energy, communications, transportation, and biomedicine, as well as numerous other fields.

In my position, I represent the professional interests of the 215,000 members of the IEEE. One hundred and sixty-five thousand of our members are in the United States, and the remaining members are located elsewhere throughout the world. We are proud to number among our membership the world's leading engineers and scientists in the broad fields of modern electrotechnology and associated basic sciences.

In the United States, the profession we represent experiences chronic hills and valleys of employment opportunities as shown in figure 1. These fluctuations are predominently tied to government spending in defense and research and development. While we fully endorse the concept of employing the best qualified person for a position, we cannot support practices which allow less reputable employers to hire alien engineers at lower salaries then that paid to similarly qualified U.S. engineers. We find that during periods of increasing demand for engineers and scientists, there is a tendency to increase the hiring of aliens which can decrease employment opportunities for the older U.S. engineer.

In my appearance today, I wish to bring this problem to the attention of the Subcommittee and to present the view of my colleague professionals regarding a desirable approach to the problems of providing the United States with the most qualified engineering professionals.

We are deeply concerned that the removal of any existing controls on the entry of foreign engineers will increase the career instability of our citizen engineer workforce. We also feel that engineers coming to this country temporarily, to smooth high peaks in demand, should be accorded compensation equal to that received by U. S. citizens for equal work being done. Without controls, conditions will lead to the discouragement and disillusionment among our U.S. engineering professionals and alien engineering professionals.

We acknowledge that our nation's industries must have the manpower needed to increase productivity and to maintain a strong technological lead internationally. At this time, there is a growing awareness that our technically-trained manpower is a valuable resource deserving greater attention. Programs are being conducted to determine more efficient ways to utilize, educate, retain, and retrain engineers for industry. The loss of controls on foreign entry will undermine these very deliberate efforts to improve the manner in which our critical human resources are managed.

I will address myself today to aspects of suggested changes in the labor certification process proposed in the Administration Bill, S.1765, and propose changes in the certification process of temporary workers.

We favor retention of the present system requiring individual labor certifications for aliens seeking approval of third and sixth preference immigration benefits. We share the view of those who feel that the labor certification process often is excessively slow; but that is a problem which can be resolved by changes in the processing of certifications which we will discuss later. We oppose the change which would authorize the Secretary of Labor to "use labor market information without reference to the specific job opportunity for which certification is requested." This proposed change, in regard to the admission, whether temporary or permanent, of alien engineers, is a matter of deep concern to the IEEE, and we oppose it as detrimental to the job security, compensation levels, and career stability of U.S. engineers.

There are many classifications of engineers (e.g. petroleum, industrial, mechanical, etc.) and each of these broad fields contain specialties. For example, IEEE membership is divided into thirty-four technical specialties, each of which contains subspecialties. The engineers skills are, in some cases, transferable from one specialty to another. Therefore, to make any blanket determination that there is a shortage in "electrical engineering" could easily be erroneous in specific categories. Certification for specific job opportunities minimizes errors in labor market determinations. The attached table (Figure 2) illustrates the differences in demand among electrical and electronics specialties as measured by the differences in salary increases over a two year period.

The table shows salary differences between 1979 and 1981 for twenty-two specialties. The salary increases range from 27.6% for computer hardware engineers to 7.1% for power generation engineers, an increase that fails to even keep pace with inflation. Thus, while it is clear that some specialties have increased their salaries to compete for qualified engineers, others can be in a state of lessening demand.

We oppose the proposal that the Secretary of Labor may waive the requirement of a specific job offer "in the case of an alien of exceptional ability." As previously indicated, we regard the requirement of individual job offers and individual certifications as a necessary attribute of the labor certification process. We ask that this be maintained for alien engineers being admitted as immigrants and as temporary workers under H-1 visas.

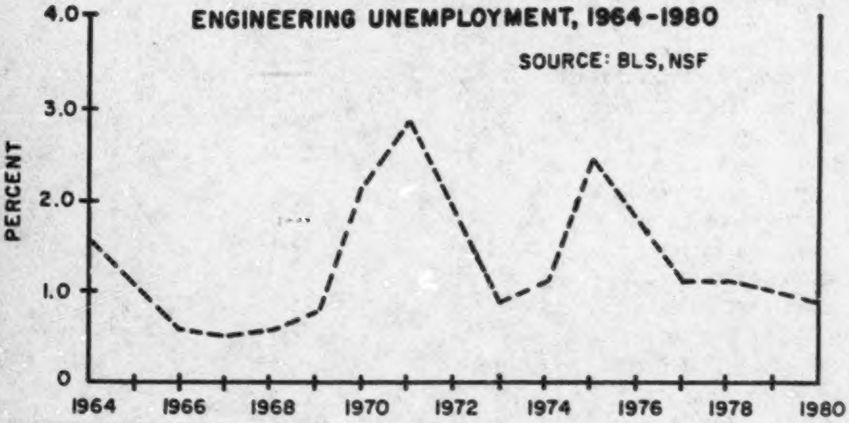
Under no circumstances would it be appropriate to put determinations of alien certifications under the control of each state without reference to the national manpower supply. Conditions of the engineering job market are such that one state may temporarily be experiencing a severe shortage of engineers while another state has an oversupply due to local economic conditions. Recently, for example, engineers in the Detroit automotive industry were laid off whereas areas in Texas experienced a steep increase in demand. If foreign temporary workers were allowed to fill Texas jobs before Michigan engineers could relocate, hardships on U.S.workers would have continued for a much greater time. Our manpower supply must be examined as a valued national resource.

We feel that creative solutions can be found to expedite certification processes. Guidelines can be made which allow the certifying officer to more quickly make a determination. In the case of engineers, for example, salary surveys are conducted by several organizations such as the IEEE. Salary ranges are given for numerous job classifications in various geographic areas.

The salary surveys provide a current resource of information that could help to speed up the process of certification of need for a particular employment position. We recommend that consideration be given to providing a guideline that immediate certification be made for positions that are supported by evidence that the alien is a qualified applicant under existing procedures, and if employed, would receive a salary higher than the 75th percentile reported in engineering salary surveys for a similar position. Similarly, we ask that a guideline be established that provides for the immediate denial of certification if the salary being offered the alien is less than the 25th percentile of that being paid for similar positions. These guidelines would provide one way to expedite the certification process while ensuring that a qualified engineer will be selected. We would welcome the opportunity to work with the Department of Labor to determine acceptable and more efficient ways to process certification applications.

I thank the Subcommittee for the opportunity to present our views.

FIGURE 1



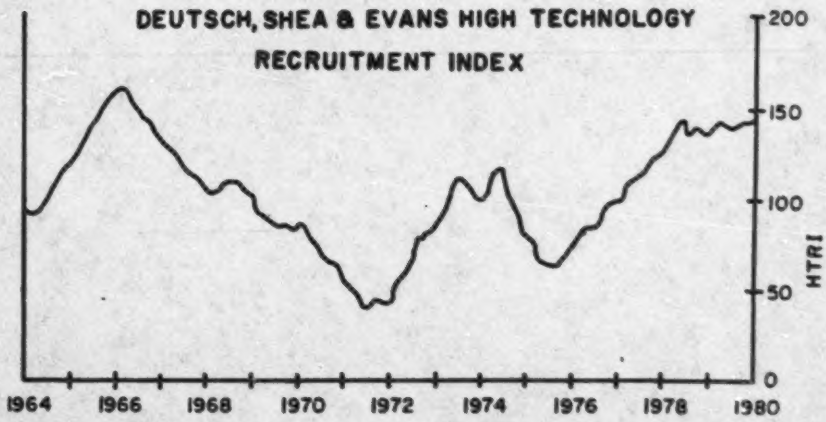


FIGURE 2

SALARY GROWTH vs PRIMARY TECHNICAL COMPETENCE FOR EE's

CATEGORY	1981 MEAN	1979 MEAN	% INCR
MINI-COMPUTERS	$35,376	$29,952	18.1
MICRO-COMPUTERS	35,954	28,384	26.7
COMPUTER PERIPHERALS	36,076	30,616	17.8
DP SYSTEMS INTEGRATION	38,074	32,069	18.7
HARDWARE (COMPUTERS)	34,755	27,237	27.6
SOFTWARE (COMPUTERS)	33,343	28,529	16.9
TEST, MEASUREMENT, INSTR.	34,786	30,088	15.6
COMMUNICATIONS SYS & EQUIP	38,638	32,468	19.0
NAV/GUIDANCE SYS & EQUIP	37,780	32,708	15.5
ELECTRONIC WARFARE	37,152	31,094	19.5
INDUSTRIAL CONTROLS	34,822	29,831	16.7
COMPONENTS & SUB-ASSYS	39,569	34,205	15.7
AIRCRAFT, MISSILES, SPACE	36,759	32,869	11.8
MEDICAL ELECTRONICS	38,589	30,417	26.9
INDEPENDENT R&D, TEST	37,414	34,534	8.3
GOVT AGENCY & MILITARY	34,837	32,435	7.4
INDUSTRIAL COMPANIES USING ELEC PRODS IN MFG, R&D	39,439	32,991	19.5
POWER GENERATION	35,868	33,479	7.1
POWER TRANSMISSION	33,990	29,337	15.9
POWER DISTRIBUTION	32,214	29,626	8.7
POWER PRODUCTION	37,561	32,117	17.0
UTILITIES EXCEPT POWER	38,852	35,223	10.3
AVERAGES	36,659	31,680	15.7

SOURCE: IEEE

Foreign Group Of EEs Booked For U.S. Jobs

By Robert Feldman

SAN JOSE, CA — A sizable group of foreign electronics engineers hired overseas in response to the domestic engineer "shortage" will start working for a major manufacturer of industrial controls early next year, *EE Times* has learned.

Though the group numbers only 17—seven from Poland and 10 from the Philippines—their arrival is certain to stir bitter controversy in the profession. Furthermore, the same head-hunting agency bringing in the vanguard group also has plans to import "a large number" of EEs for Rockwell International. This second group is to work on the B-1B bomber project for the U.S. Air Force which, if approved by Congress, will start up later in the year.

The head-hunting firm, Omni Personnel Services of San Jose, told *EE Times* the name of its client company for the initial group, but asked that it not be published.

(See "Foreign," Page 2)

Foreign Engineer Group Due Soon; Thousands Of Filipinos Seek Visas

(Continued from Page 1)

"At this time, they would rather not deal with the commotion the announcement would create," explains Omni's director, Rodrigo Alaura.

Alaura's agency, which began by importing Filipino nurses to fill a shortage in U.S. hospitals seven years ago, advertised recently that it could obtain technical workers from the Philippines at a "sizable reduction in wages."

Confronted on this issue in his small office on Stevens Creek Boulevard here, however, the 33-year-old Filipino-born entrepreneur hesitated, and then said that his people would come in at "the prevailing starting salary, about $20,000 or $21,000 a year—what a starting EE would make just out of college.

"But foreigners who want to stay here will work twice as hard for their employers," Alaura added. "And don't forget, these men have had five years of experience or more in their fields. The boss gets the benefit of that without extra cost."

Alaura pointed out that, in the Philippines, unemployment is running at 36 percent. Moreover, the five major engineering schools continue to graduate about 2000 BSEEs a year.

"There are 100 applicants for every engineering job in the Philippines," he said. "And if you're lucky enough to get one, the pay averages about $300 a month. Now, if you were one of these guys, wouldn't you be happy to work in the U.S. for even the minimum wage, let alone the $1500 a month [rather less than $20K/year] they will actually earn here? To the typical Filipino worker, America is heaven."

Stored in the memory disks of a TRS-80 in Omni's office are biodatas of thousands of engineers and technicians, both employed and unemployed, in Manila. In addition, several hundred Filipinos presently working on microwave projects in Saudi Arabia, and wishing to immigrate to the U.S., are available.

In the last two-and-one-half years, Omni has placed more than 200 Filipino engineers and technicians in Saudi Arabia for Collins Systems International, a division of Rockwell International. Fifty more are now enroute to Collins headquarters in Texas, where they will undergo training before Collins ships them to its microwave projects in Saudi Arabia.

Before the first batch of foreigners arrives to work in the U.S., Omni will obtain the H-1 visas, good for one year, needed by temporary workers. The process should take two months, Alaura estimated, during which Omni would also prepare accommodations for them in Silicon Valley, where they will work for the first six months.

The client company is currently reviewing the individual applications. Checking of qualifications and references in the Philippines and Poland will be done by the respective U.S. embassies. The men, who will all receive thorough physical examinations, are in their late 20s and early 30s, and are predominantly unmarried. Under native law, the Filipinos are obliged to send 30 percent of their wages either to relatives at home or to a trust account in the Philippines central bank.

Congress is currently considering amending the immigration law to ease the procurement of H-1 visas for skilled immigrants in occupations and professions where there is a U.S. scarcity.

Under the present law, a prospective employer must prove, on a case-by-case basis, that the job cannot be filled by someone already in the U.S. The paperwork can take as long as 18 months and cost thousands of dollars in legal fees.

Routine Visas Seen

A new procedure proposed by the Administration would dispense with the individual certification. Instead, the Department of Labor would publish an annual list of occupations where labor is in short supply. H-1 visas would be routinely granted to any qualified foreigner.

The total quota for such visas might still be limited (under present law, it is fixed at 54,000 a year), but more of the H-1 immigrants would be engineers and other genuinely scarce professionals. Under the present individualized system for granting the visas, much of the quota has been used up by "border-jumpers"—ordinary aliens coming in on dubious certifications to "accommodate" relatives or friends.

North American Placement Service, a Washington head-hunting firm, has brought in thousands of aliens to work

(Continued on Page 10)

Reprinted from:

Electronic Engineering Times - Monday, November 9, 1981

Foreign Engineers Coming; Pay Scale Questioned

(Continued from Page 2)

in American industry, but very few engineers.

"We're processing three right now, but I wish we could handle more," said George Ludlow, North American's vice president.

"Unfortunately, most companies can't afford to wait 18 months to fill their professional vacancies, and very few professionals, even those overseas, would want to go to all that trouble just for the chance of a one-year job in the U.S."

Ludlow, who testified last week before the House Immigration and Refugee Committee, which is considering the problem, said that an amendment to the proposed bill would extend the H-1 visa to be valid for three years' residency.

The question of aliens taking jobs as EEs in the U.S. stirred controversy at last month's IEEE Careers Conference in Denver, with several delegates disputing that there was a real scarcity of EEs.

At a "cracker barrel" session one evening, John D. Peebles, coordinator of the IEEE Professional Activities Committee, said that his employer, Stearn-Roger Engineering Corporation, had tried for two years to fill several vacancies, but finally had to import engineers from England.

The IEEE United States Activities Board (USAB) is expected at a December meeting in Savannah, GA, to draft a position paper on alien engineers for presentation to the Secretary of Labor. The paper will include details from the IEEE's Spring, 1981, salary survey, and recommend that, before an alien be allowed to immigrate to fill any job, it should be advertised in the U.S. at an offered salary in the 75th percentile of the chart.

For an EE with between two and four years of experience, that salary level in Silicon Valley would be $32,000. With five to nine years, it would be $36,000.

Darrell Vines, a member of USAB, said that "there is no shortage of engineers—it's just difficult to get them to take jobs at the salaries being offered."

Told of Omni's statement that EEs with five years' experience would take jobs at "starting" pay of $20,000, Vines told *EE Times*:

"If that contractor is bringing them in for those wages, then it represents a clear abuse of the spirit, if not the letter, of the law. New BSEEs just out of Texas Tech begin their first jobs at salaries between $22,000 and $23,500—and that's in the midwestern U.S. In Silicon Valley, they're starting at $28K."

But Omni has won well-placed friends at Rockwell's Collins division. L. Wayne West, Collins subcontract manager, wrote a glowing tribute to Alaura, citing his help in staffing the Saudi operation.

'Reliable Body Shop'

West told *EE Times*:

"We used to work with another body shop, but we found Omni completely reliable. Their Filipinos are very qualified and work hard. I hear that Rockwell is considering asking Omni to bid on supplying Filipino engineers and technicians for our B-1B contract. There is a good chance we will be using Filipino labor on this. We just can't get enough engineering talent domestically."

But the Phillipines do have talent available. Five schools, all in Manila, offer BSEE courses, the most prestigious being M.I.T. (Mapua Institute of Technology). A steady flow of Filipinos has arrived in the last 40 years and, as a result, the Filipino-born population of the U.S. numbers upwards of 4 million.

For placing fellow Filipinos in U.S. jobs, getting their visas and fixing up their trip and accommodations, Alaura charges 18 percent of their first year's salary. In addition, he advances the price of their air ticket, to be repaid out of salary. Finally, there is the 30 percent to be sent to the Philippines. After rent and other expenses, not much would be left of a $20,000 salary.

"But my boys would earn a raise," Alaura pitches. "Their American bosses always appreciate how hard the Filipino works. Also, they are Catholics. They are loyal, straight, moral and God-fearing."

If an immigration wave materializes, Omni could become a job shop, Alaura conjectures. He concedes that the Filipino engineers may fall somewhat short in solid-state and other advanced electronics, but he conceives of packaging engineers and technicians.

Senator SIMPSON. Mr. Romo.

STATEMENT OF JESUS ROMO, DIRECTOR, FARMWORKER RIGHTS ORGANIZATION

Mr. ROMO. Thank you, Mr. Chairman. I am here representing the Farmworker Rights Organization in Florida and the Arizona Farmworkers Union.

At the outset I would like to state that we do not favor either the H-2 program or the guest workers program as proposed by President Reagan, and we feel that both programs are but a subsidy for American agribusiness at the expense of the farmworkers of this country. Our testimony will focus on two questions: Why does agribusiness prefer legal temporary foreign workers to domestic workers; and the second one, What effect would the temporary foreign workers have in our economic and social-political structure?

Agribusiness prefers temporary foreign workers because with them it receives a greater economic return by using congressional exemptions, exchanging with the sending nation's workers who become injured or otherwise not productive, and keeping wages and working conditions down on the threat of deportation.

To illustrate, we shall point out to you an agribusiness document and several instances where the companies have exercised their power and political leverage to control and use the H-2 work force. In December of 1979, the Florida Fruit and Vegetable Association presented a statement to the Select Commission on Immigration and Refugee Policy in support of its H-2 program in Florida. The document revealed the following cost figures for an H-2 worker, which were calculated only for Florida and were based on a sugar cane season of 140 days, with workers averaging $150 per week or $3,000 for the season.

The FFVA calculated a total cost per H-2 worker of $551. The document then proceeded to point out the cost of providing the same employment to domestic American workers. The document, however, provided only the unemployment compensation and social security costs. We added the free rent for the local workers, the loss of board and meals, transportation to the fields, and the loss of domestic workers transportation costs and advertisement, and we came up with $694.90.

According to these figures, the Florida agribusiness saves approximately $143.90 for each H-2 worker. These figures reflect only the initial savings in the maintenance of a captive work force that oftentimes does not even know how much it is being paid.

Some of the workers that we have sent into sugar cane have told us of how the companies make them work for seven to 9 hours per day and then would pay them with checks that reflect only 4 hours of work, in order to keep the wages down and still maintain company records that showed the minimum adverse effect wages mandated by law.

Additionally, you might have noticed that the sugar industry has not included in these cost figures the unemployment compensation insurance. The companies do not pay insurance for disabled workers, deporting them instead. And all of the on job-related injuries are treated by company doctors.

Besides the disabled workers, the companies also deport any nontop productive worker, and any potential dissenters, exchanging them for new workers from the sending countries. In its efforts to take advantage of the savings afforded by the importation of foreign workers, the companies engage in open discrimination in recruitment and employment of local workers, alleging that the local workers are either not experienced or do not wish to engage in sugar cane harvesting.

In 1980, we had more than 4,400 workers who applied in the city of Miami in a high school stadium for jobs with the sugar industry. Only 1,700 of these workers were accepted. The rest were either rejected outright or not notified of employment.

Of the 1,700 workers who were accepted, only 98 finished the season. We spoke with the workers to find out why they had not finished the season. We were told that they had either become injured on the job and had been told, after visiting the company doctor, that they no longer had a job, or were simply told that there were no more Haitians allowed to work for the company.

This year the industry refused employment to anyone who had either interviewed and had not been hired by the industry or who had been hired but had not finished the season. The result is that none of the 4,400 workers, with the exception of the 98 who finished the season, will ever be eligible to work for the sugar industry.

The same is true of the workers who actually engaged in employment with the industry. We had 38 of them this year who started working and actually had to go on strike, protesting bad working conditions, bad living conditions and the discrimination against the recruitment and actual employment of local workers.

In 1968 152 workers protested against the company for the conditions in the industry and 100 of them were deported immediately or jailed that day and 52 of them were jailed and bonded at $11,500 each.

I would just like to finish, Mr. Chairman, by saying that the H-2 program, like the bracero program before it, is a growers' solution, an attempt to freeze the process of change either before it starts or before it gets too far along. It is the perfect picture of the characteristically conservative free enterprise businessman, using U.S. Government intervention to regulate their labor supply in preference to having to compete in an organized free labor market.

Thank you.

Senator SIMPSON. Thank you very much, Mr. Romo.

I have some questions of Ms. Bower. The Department of Agriculture has testified that the number of domestic migrant farm workers has decreased significantly in recent years, from around 400,000 in 1960 to 200,000 in 1970. What is your estimate of the current population of U.S. migrant workers, and do you think that number is sufficient to meet the needs of agriculture without the importation of foreign labor?

Ms. BOWER. As to, Mr. Chairman, the number of actual workers that migrate, has gone down. And at one point it went down very much due to the energy crisis and the increased cost of gasoline to migrate.

But my feeling is and the feeling of our union is that there are enough workers to do the agricultural work, and we see workers now who are unemployed even from other jobs that would be willing to go into farm labor. There are a lot of cases of this happening already, with unemployment as high as it is.

Senator SIMPSON. Those in agriculture have also testified that they estimate there are some 300,000 to 500,000 illegal migrants in agriculture. If it is true that illegal migrants outnumber U.S. migrants, then what steps could be taken to avoid disruption of agricultural production in areas that are dependent upon illegal labor once these enforcement reforms are instituted?

Ms. BOWER. Well, I feel that there are, as I said before, the legal workers available. If there were more resources allocated by the Department of Labor to find the workers, we are really convinced that that could be done, to find the legal workers.

We have cases where legal workers who have green cards in California, and I cite the case that I have in my testimony of Kawano versus the UFW, which is a case which we just won, the back wages. The California Agricultural Labor Relations Board has determined that back wages be paid to all the workers who were fired who were legal green card workers from Mexico, who were fired in favor of illegal workers.

Senator SIMPSON. What was the amount of that and what was the impact of that judgment?

Ms. BOWER. It was different for each worker that is involved and the amounts have not been yet determined.

Senator SIMPSON. You stress this need for early recruitment of domestic migrants. And what time in your mind would be adequate, and how could employers be assured that these persons would show up? Have you thought on that?

Ms. BOWER. I have not thought of an exact time.

Senator SIMPSON. Well, it is a problem and I just wondered if you had anything to add to it, on the early recruitment issue.

Ms. BOWER. I think if they would anticipate ahead of time when they know what their needs are going to be, if they would anticipate this ahead of time and give themselves enough time. If people can be recruited from another country it stands to reason to me that they could be found within this country itself.

Senator SIMPSON. That is one of the issues that we are trying to focus on. And then we come to the point that if the domestic migrant farmworker force is in fact decreasing, which it in fact is, what steps should we be taking to encourage rural minority youth, who have unemployment rates of some 50 percent, to take this type of job.

Ms. BOWER. Well, the wages will determine this. I think that is kind of clear. Where we do have union hiring halls, there is no problem getting workers. They are lined up at the hiring halls all of the time. And our wage, average wage under the 1980 contracts was $4.51 an hour. So that we feel that even at minimum wage you would get the youth to take these jobs.

Senator SIMPSON. Dr. Gowen, we have heard testimony from international personnel groups who state that, although unemployment rates may be high for civil engineers, for example, that the kinds of engineers being imported are those with advanced degrees.

We had this testimony a couple of weeks ago, I think, that those being imported were those with advanced degrees in highly specialized areas where the United States may not have the same technology.

What is your perspective on that assertion?

Dr. GOWEN. Mr. Chairman, we have looked into the question of the shortage of engineers. In segments of our population, in areas of particular specialties, there are shortages. But across the board it is our decision that there is not a severe shortage of all types of engineers.

For instance, I have with me an article which I would like to provide to you and your committee to look at, and it relates to the hiring of engineers, electrical engineers in California, for the computer industries. And it claims that it is easier to hire Filipino engineers at salaries which are far below that which are provided to even graduates of U.S. institutions.

My particular concern is that article appeared in one of our leading industry-oriented newspapers, relating to the particular area of computer personnell needs. This article entitled "Foreign Groups of EE's Booked for U.S. Jobs" appears to report a direct attempt to try to bring engineering related people into the United States under the guise of bringing them in a particular critical specialty.

So yes, sir, there are some areas where there are needs. We need Ph. D.'s in our colleges, and we need them severely. We also need engineers in our computer areas. But to make a blanket statement concerning a grave shortage is not warranted at this time.

Senator SIMPSON. You state that foreign engineers often take jobs at lower salaries than U.S. engineers. If the requirement to pay the prevailing wage rate is not sufficient protection for U.S. workers in nonagricultural fields, what suggestions would you have to improve that protection?

Dr. GOWEN. Mr. Chairman, I offer the salary surveys which are available. We have tried to work with the Department of Labor and we have had good relationships with them. We would like to continue our assistance and offer any assistance we could provide.

The IEEE is one engineering organization. We are not unique. Many of the engineering organizations have similar salary surveys and can provide such information. That information is also specific by degree categories, by job specialties, by management categories, by technical training and by geographic areas. That lets us sharpen up much better than the prevailing wage rate.

Senator SIMPSON. The Department of Labor testified that I think 1,800 foreign engineers were admitted in H-2 status in 1980. And approximately how many engineers were unemployed in the United States at that time?

Dr. GOWEN. If you consider the unemployment rate for engineers, it has ranged around 1½ percent. Another way of looking at that number is to consider, for instance, if we take in the electrical engineering area specifically, in 1980 there were 1,106 third and sixth preference engineers entering into the United States. There were something like 846 temporary electrical engineering classifications given.

When you put that all together, that represents about 10 percent of about 20,000 new starts that are graduates and others entering the profession. The number of people entering as aliens tends to be a relatively large percentage.

That has led us to ask the question of what are the major shortages. Considering that 1½ percent, seems to be a very low unemployment rate, yet the engineering profession, has been at that level.

When we saw the massive layoffs in the aerospace industry in the seventies we found that at that time unemployment peaked up in California up to about 8 percent, and frankly that was viewed as an absolute disaster within specialty areas in our industry.

Senator **Simpson**. Is it your view that the H-2 engineers are being admitted for jobs that are in fact temporary? And if not, do you have any information, in that book or elsewhere——

Dr. **Gowen**. I will provide this to you, sir.

Senator **Simpson** [continuing]. About the number who adjust status, who remain as immigrants?

Dr. **Gowen**. It has been difficult for us to find that information, as I am sure you can appreciate. We have a group of alien temporary engineers in the Boston area who have spoken out with great fear and trepidation. Other members of the panel were speaking of farmworkers living under conditions of fear, while I speak of engineers who like the farmworkers also are being forced to exist in conditions unacceptable to the engineering profession—engineers who are living in a state of fear.

We have such conditions in our United States today, and I think that is the type of activity that we ought to avoid.

Senator **Simpson**. Do you have any competition, significant identified competition from F-1 foreign engineering students?

Dr. **Gowen**. There are students who will follow their education with the opportunity for employment experience. In many instances the employment experience will be extended over an appropriate status to become, if possible, a third or sixth preference, or to be categoried over to one of the H categories and ultimately working the process through to change status.

It is hard for us to give you specific numbers, because those numbers are very hard to find. Our feeling is that such changes do occur within our profession and within our industrial plants. I receive correspondence from our people who are very concerned about those kinds of issues.

Senator **Simpson**. Thank you.

Mr. Romo, I wish I could express some more probative questions for you, but I really am unable to do that because I did not have the benefit of your testimony before just a few minutes before you did testify. And for whatever reason that is, I do not know. But I would just comment on it, that it would be helpful to us to help you if we could have that testimony in a little swifter fashion. And no lectures, but it would be very helpful.

But I do hear what you are saying, and I have reviewed it as best I could while you were testifying. And you are saying that you express opposition to both the H-2 program and the temporary worker program or the guest worker program or the pilot project, regardless of size; is that not correct?

Mr. **Romo**. That is correct.

Senator SIMPSON. Any type of pilot, whether it is 50,000 or 10,000 or 100, or whatever?

Mr. ROMO. Yes, sir. We feel that any kind of temporary worker program would have an adverse effect on the farmworkers of this Nation.

Senator SIMPSON. One of the things I think that surprised me as I first came into it is that more than half of these H-2 workers are not employed in agriculture. And I think our figure is that, as Mr. Lovell testified, that about 25,000 temporary nonagricultural workers were certified out of a number of about 43,000, I think.

And the four major occupational categories of those nonagricultural are: Entertainers, about 3,700 in entertainment; engineers, about 1,800; sports figures, about 2,000—that is America's soccer players and others—and construction, about 6,200.

And an interesting part to me was that the national origins of those nonagricultural H-2 workers are mostly occupations filled by citizens from Canada, Great Britain, Mexico, and West Germany.

But if we were to terminate or get rid of the H-2 program, do you think that others in those categories could be replaced by American workers, as you suggest that the agricultural workers can and should be replaced by American citizens, or workers, rather?

Mr. ROMO. Well, we feel that if there is indeed a need for any kind of worker in the United States, that that worker should be allowed to come in and should have the same rights and the same protections afforded to every other worker. And this is what happens with workers like H-2 workers or guest workers who come in and are really not protected by the laws of this country, and so you create a subclass and that is really our opposition.

With regard to the people that are coming in, if there is a need, why not issue green cards for them? For instance, just a comment. I am very familiar with the sheepherders and I know that there is a great need for those skilled workers in this country. But why bring them in as H-2 workers? Why not just give them green cards, and that way we do not have to import them every year, especially when we are only talking about 1,000 workers?

Senator SIMPSON. If we are going to, during this interim while we are nearly—or while we are working on the legislation and going into markup on it next year, if we are going to continue to have an H-2 program, do you have any specific reform proposals for us while we are marking up and preparing that legislation for markup? If you could just briefly give them.

Mr. ROMO. Yes, sir. We feel that the H-2 program as it is right now, with the present regulations that govern it, that there is not sufficient enforcement of the regulations by the Department of Labor; and also that the growers really take too much of an advantage of the cooperation that they get from the Department of Labor.

For instance, this summer we had more than 1,000 unemployed Haitian workers in Florida, and when the apple growers came over to recruit for the harvest we sent 200 workers in and only two of those workers were even actually interviewed and neither one of those two were hired because they did not want to pay for the transportation.

With the sugar industry it is the same thing. We have a great deal of problem with recruitment and we had many problems with the Department of Labor actually enforcing the regulations that are already on the books.

So if you are going to have an H-2 program, I think the suggestions that were made by Mr. Semler and Mr. Williams and the rest of the panel should be looked into, because we do have a great number of farmworkers who are presently unemployed and who are suffering from hunger and bad working and living conditions and who could be employed in these apple jobs, tobacco jobs, and the sugar cane jobs.

Senator SIMPSON. I thank you very much, Mr. Romo. And I thank the members of the panel.

And we will now recess until 2 o'clock, when the Governor of Texas will testify. Thank you very much.

[Whereupon, at 1:10 p.m., the subcommittee was recessed, to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Senator SIMPSON. The hearing will come to order again.

At this time it is a distinct personal pleasure to have with us to hear his remarks the Governor of Texas, Hon. William Clements. Bill Clements, I think, among all of the Governors of the United States, is a person that knows firsthand the deep nature of the problems with regard to legal and illegal immigration, and has a vital interest in it, and also carries the standard of the fellow Governors in that area of the United States who have studied it and observed it and lived with the problems, long efforts.

And I am deeply appreciative of your coming here and it is a pleasure to welcome you to the subcommittee, Governor Clements.

STATEMENT OF HON. WILLIAM P. CLEMENTS, JR., GOVERNOR OF THE STATE OF TEXAS

Governor Clements. I have a rather short formal statement to read into the record, and there are copies available. I do not know whether they have been passed out at this point or not.

Senator SIMPSON. They have.

Governor Clements. Then after I have made the statement, if you have questions, why, I would be happy to respond in whatever areas you would like to talk about.

Mr. Chairman, members of the Committee, I am pleased to be here today to testify on the vital issue of immigration.

The United States can no longer condone the shameful exploitation of the illegal aliens through lack of attention to this issue. The illegal alien falls victim to his own lack of legal status, which prohibits the protection of his basic human rights. He is vulnerable in areas of housing, wages, acceptable working conditions, health care and other services. The constant threat of deportation hangs over his head.

The current situation is wrong, and I trust you will enact legislation to correct it.

Since becoming Governor of Texas in January 1979, I have had the opportunity to discuss this issue with Mexican President Lopez

Portillo twice. Additionally, I have met several times with the governors of the Mexican states of Tamaulipas, Nuevo Leon, Coahuila and Chihuahua, which share a common border with Texas, to pursue possible solutions to this complex question.

As a result of those meetings, the first historic conference of the United States-Mexico border Governors was held in Juarez, Mexico, in June 1980. Representing the U.S. side of the border States were the governors from Texas, New Mexico, Arizona, and California. The United States-Mexico border Governors met again at the second annual United States-Mexico border Governors Conference in El Paso, Tex., on October 5 and 6, 1981. No other topic was given as much attention as the perplexing problem of what to do about the illegal alien.

I believe the Reagan administration's proposed immigration and refugee legislation is correct and is a vital first step. I commend the President for his courage in addressing one of the major issues of our time, rather than sweeping it under the rug as has been the case for years.

THE TEMPORARY MEXICAN WORKER ACT

The guest worker provision of the immigration policy is the keystone of the proposed legislation. There is no question in my mind that the Mexican workers make an important contribution to the economy of the United States.

The estimates of the number of Mexican workers in Texas range from a conservative figure of 500,000 to as many as 3 million.

I do not believe that the Mexican worker takes a significant number of jobs away from Americans, but rather that he or she augments the labor force by taking those jobs that go unfilled because of the lack of interest on the part of the American worker.

Since there is no reliable statistical information available to adequately substantiate this point, the administration's proposal to structure this provision as a 2-year pilot program limited to 50,000 Mexican guest workers per year is a reasonable approach, though I would have proposed more workers.

Because of the lack of a factual data base reflecting the number of illegal Mexican aliens in this country and specifics as to his or her characteristics, I have established a task force in Texas to determine the following: the number of illegal Mexican aliens in Texas; marital status; age; country of origin; length of stay; whether they seek U.S. citizenship; income wages; is money sent home and how much; maltreatment they might have experienced; do they come in yearly cycles; and then their preference relating to a fast track to citizenship or guest worker status.

The findings of this task force will then be used by Texas to determine the dimension of this problem and the requirements for guest workers.

With each State having different requirements for guest workers, it is appropriate to have the Governor wishing to participate to certify those jobs that would be used in this program.

The Texas Employment Commission and other states 'employment offices are currently programed to certify job vacancies, not jobs filled. Section 601 subsection (b)(1) of the act proposed that the:

> Governor of each of the states of the United States wishing to participate in the program establish . . . a list of industries . . . and/or a list of occupations containing the industries and/or occupations . . . having an adequate supply of qualified workers within such state.

This provision should be changed to coincide with the existing programs of the State employment commissions. Then they would not have to reprogram their data gathering to indicate job categories that are filled and therefore not available to the guest worker seeking a job. The result would be more cost effective and would fit current employment commission capability.

Furthermore, a list of occupational vacancies can be shared with the Mexican Government so that they in turn can advise their citizens of the job opportunities that are available under the temporary worker provision.

To allow for seasonal employment needs, it is desirable to continue the H-2 temporary worker provision as an adjunct to the proposed temporary worker program. I would recommend that the administration of the H-2 program be transferred from the Labor Department to the Department of Agriculture. It is anticipated that the majority of the requests for the H-2 seasonal employees will be from the agricultural sector. Therefore, placement of this program within USDA would seem logical. The Secretary of Agriculture would be more knowledgeable as to the needs of agriculture, and would be in a better position to assess those needs and evaluate them for the Attorney General, who would then retain final authority regarding the admission of H-2 workers.

EMPLOYER SANCTION

An employer sanction is essential to the success of this immigration policy. During the development of my position paper on immigration I recommended a $1,000 relocation fee that would be charged as a civil penalty to the employer per illegal alien employed. This fee would then be used to defray the costs involved in sending the illegal worker back to Mexico.

Once a source of legal workers is available, prospective employers should be deterred from hiring illegal aliens.

Employers must realize that the failure to comply with the proposed new law will be costly. Sanctions would also tend to restrict employment opportunities to those that are essential.

In order for any immigration program to work, Mexico must be involved through full consultation and the program must address our mutuality of interests.

During the Second United States-Mexico Border Governors Conference held in El Paso, Tex., on October 5 and 6, 1981, the Mexican Governors recognized that immigration policy was rightfully the responsibility of the Federal Government of the United States. However, they confided that any policy affecting their citizens was of great interest to them.

The lack of jobs in Mexico was cited as the root of the problem that has drained the talented and aggressive work force away from Mexico. They voiced concern for the lack of basic human rights protection that is denied the undocumented worker. The perception by the Mexican governors is that these workers provide a much needed labor force to the United States, and I agree.

The Reagan administration immigration initiative is seen as a welcomed first step in addressing the problem. Again, their main concern is to cease the exploitation of these workers.

I recommend that Mexico be requested to provide exit visas to those workers that will be entering the United States under the Temporary Mexican Workers Act.

Furthermore, I recommend that once the worker has reached his job site, Mexico continue to monitor the whereabouts of these guest workers and the Immigration and Naturalization Service share appropriate information with the Mexicans. The ideal situation would be for full computerized data to be shared on these workers and that assistance be sought from the Mexican Government to stop Mexican workers from crossing the border into the United States unless they comply with the law and the mutually agreed principles.

TEMPORARY RESIDENT STATUS FOR ILLEGAL ALIENS

This title of the immigration proposal is essential to address the estimated 3 to 6 million illegal aliens that are now in the country. However, it is recommended that the suggested date of January 1, 1980, be adjusted to provide for the gap that would exist between this date and the enactment of the legislation.

For this immigration and refugee policy to succeed, it must be viewed as a full partnership involving the U.S. Government, Mexico, the employer and the temporary guest worker.

There is no easy solution to the immigration problem, but the time has come to act. This problem does have solutions.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, Governor, for very helpful testimony. And indeed, there is no easy solution to this problem. But the solutions we are certainly pursuing in this rather extensive series of hearings. And your support and assistance is very appropriate and very helpful.

You stated that estimate of Mexican workers in Texas to be between 500,000 to 3 million. That is an extraordinary figure. Do you have any idea as to how many of those might be engaged in agriculture?

Governor CLEMENTS. Senator, I have just recently been asked that same question, and we do not have any definitive numbers that would be reliable that would enable me to respond. All I could give you would be a guess estimate, and if you would accept that I would not mind doing it, as long as you know what you are getting. It is only a guess.

Senator SIMPSON. Well, we get that and do not even know it up here sometimes. So give it to me. I would love to hear it. [Laughter.]

Governor CLEMENTS. I suspect that we probably have about one-third, from 30 to 33⅓ percent. That is a rather narrow guess, but I say that because in my judgment most of these undocumented workers are in construction, first of all, and they are in service industries, like hotels and restaurants and things of that kind.

And contrary to what was true in the past—and I am going back now 10, 15, and 20 years—when the concentration then was in agriculture, but today, because of the tremendous population explosion that we are having in Texas, along with attendant growth in our metropolitan areas, the building industries, the construction industries, the service industries are employing most of these people at the present time.

There has been a decided shift, in other words, from the agricultural sector 15 or 20 years ago now into the metropolitan areas, and they are employed in a different endeavor now.

Senator SIMPSON. That is an interesting theme that we are finding throughout the country, that one of the other figures is that only 15 percent are involved in agriculture of all illegal undocumented workers.

Governor CLEMENTS. I could accept that. I am not familiar with the rest of the country, of course. But in Texas, because of our highly irrigated area along the valley and the fact that Texas ranks No. 3 as an agricultural State, we would have more than would normally be true in the rest of the country.

Senator SIMPSON. I recall I had the pleasure of discussing this with you many weeks ago on this undocumented alien and the general area of reform in immigration policy. And I was fascinated and remain so about the Texas task force. And you have indicated to us what the facts are and what the information you are seeking with that task force.

When does the timetable call for that task force to report in, because that will be of very great interest to us here?

Governor CLEMENTS. Unfortunately, Senator, I cannot give you a soon to be date. My best estimate on this would be that we would not have any kind of definitive report from this task force before April. And as I have just discussed with you your timetable, I am fearful that we will not get these numbers back to you in time for it to influence or to be used in your legislative suggestions.

Senator SIMPSON. I think that that might well fit as we go into markup proceedings early in the year. It just seems—and I think the thing that would be of interest, if you might just state it briefly for the record, is to how those interviews are being made and who is making them, who is taking the interviews. I think that is a very important thing.

Governor CLEMENTS. I could not agree more. We discussed this at some great length as to how we should approach the problem, because in the first instance these people are not bilingual. They will only be speaking Spanish. They will also be illegal so far as their present status is concerned, and therefore you have to approach this with some caution or you are not going to get proper responses.

So we put the task force together based upon our academic resources. The President of Texas Tech University is the chairman, Dr. Cavazos. We then had four other institutions who are participating: the University of Texas at El Paso, Texas A&M at College Station, our University of Texas at Austin, and Pan-American University at Harlingen.

And their staffs are fully participating in this, as well as professionals in the field of demographics. And in this instance we are planning to use Lance Tarrance to put the formulas together on a basis, so that, assume that we take 2,000 interviews and then we go down through the construction industry and they poll their contractors and we go through the hotel association and they poll their hotel membership, and the same way with restaurants.

Between these industries we have a very broad, big cross-sample or profile of these illegal aliens. We are satisfied, after much discussion, that we can come within plus or minus 5 percent of an accurate number.

This will be handled in a highly professional manner. Only Mexican-Americans who are in Texas and who are completely bilingual will do the interviews. No Anglos will do the interviews. And these will be personal interviews and not telephone interviews. And so it is going to be a tedious, costly procedure.

But frankly, Senator, these numbers have skipped all over the lot, as you can imagine, and we in Texas consider that this is a serious problem for us and we had no factual data base from which to move. And the Attorney General's office, the State Department, the Department of Labor, the Department of Commerce, there was no Federal agency that could really give us some hard numbers.

So we decided that we would try to determine this for ourselves, and therefore we have undertaken this study.

Senator SIMPSON. I think it will be a very important contribution to the issue, I really do.

Governor CLEMENTS. We will keep you and your staff fully informed.

Senator SIMPSON. I deeeply appreciate that.

You do advocate, of course, that Mexico be included in negotiations relating to temporary workers. Do you favor any kind of a bilateral agreement with Mexico for the H-2 program?

Governor CLEMENTS. I would let Mexico determine this, frankly. I would personally have nothing but a favorable inclination in this regard. But I am not sure that Mexico would formally want to have a bilateral agreement, and I would approach this with them and find out what their wishes might be in this regard. And if they wished to participate in such a program, which I think would be most helpful, then I would certainly do it. But they may not want to.

From our standpoint, I do not see why we would have any objection at all. As a matter of fact, we should welcome their participation.

I would only add, Senator, that not only in that particular program, but also with respect to whatever comes out of your committee here so far as legislation is concerned, as I say in my formal presentation, I think it is terribly important that Mexico be informed, that they be consulted, and that their mutuality of interests be recognized. Because they are terribly concerned about this same issue.

Senator SIMPSON. Well, you certainly indicate to us that the nonagricultural need is there in Texas, heavily so, with your growth and urban development. And that is helpful.

Some of the studies that have been done in Texas disclose to us that illegal workers are sometimes disproportionately concentrated in the same sectors of the labor market and the same areas of geographical note as the most disadvantaged U.S. worker, the minority or women or youth.

How might the wages or working conditions of those persons be best protected within the scope of any temporary worker program? We find the same thing throughout the United States. It is not just Texas, I might add. But how might the wages and working conditions of those persons be protected as we look at a temporary worker or a guest worker program? Do you have anything you could share with us on that? I just would be interested, because of your depth of grappling with this.

Governor CLEMENTS. Unfortunately, those are hard and most difficult numbers to come by, and we find—and I guess I should say we think, because we have not confirmed this yet. But we think that our greatest concentration of the undocumented Mexican worker is in those areas that are now considered metropolitan areas and are the fastest growing. That is where we have the greatest in-migration that is coming into Texas that is so increasing our population.

Unemployment in those particular metropolitan areas, such as Houston, the Dallas-Fort Worth area, San Antonio, the unemployment there is very low, and primarily this is of course due to the enormous amount of construction that is taking place in those metropolitan areas.

I really doubt that there is much competition between these illegal aliens that we are talking about from Mexico and the lower economic scale represented in the minority groups. I doubt that there is very much competition there.

Senator SIMPSON. That is most helpful and I appreciate very much your coming. I think the work of the task force and what I believe it is going to show us is exciting, and we look forward to it and appreciate the way you have put that one together.

Even though the subcommittee has not held any field hearings, so to speak, and really will not, because the Select Commission held more than several and I participated in some of those, nevertheless, I am going to make an effort prior to taking this up again in January to come to some border points in Texas to visit with the Mexican officials. And I will assure you that I will contact you and come to visit with you further.

Governor CLEMENTS. You will be most welcome. And if you will just let yourself be exposed to Texas, you may change your residence. [Laughter.]

Senator SIMPSON. Well, I do not know about that. I want to tell you that I was exposed to Texas in 1952 when I played football. I weighed 250 and had hair, and we played Houston at Rice Stadium in 1952 in December, and got beat, too. [Laughter.]

Governor CLEMENTS. We will give you a better experience this time. [Laughter.]

Senator SIMPSON. Thank you, Governor, very much.

Governor CLEMENTS. Thank you, Senator, very much.

Senator SIMPSON. Our next witness before the subcommittee is my good colleague and seat mate in this body, both of us coming here at the same particular time. It is a pleasure always to welcome you, Senator Warner. I am most intrigued at the issue that you will discuss today, because I think that in all of our hearings and so on never have we really confronted the issue you have particularly in your State, with not only the law as it is but the labor group that you are attracting and the crop to be handled. It has been most intriguing to read your testimony, and we appreciate your sharing it with us. It is good to have you here.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA, ACCOMPANIED BY TRAVEL HOREL

Senator **Warner**. Thank you, Mr. Chairman. I am joined this morning by Ms. Horel, who is a professional on my staff and has spent a good deal of time on this issue.

S. 1076, which is a bill I introduced on April 30 of this year, would amend the Immigration and Nationality Act to exempt nonimmigrant aliens entering the United States for the purpose of agricultural labor from the provisions of sections 212 and 214 of that act, relating specifically to the establishment of the adverse effect wage rates for nonimmigrant labor.

Should this bill be enacted into law, it would effectively repeal Federal regulations for adverse effect wage rates which require American farmers to paying higher wages—and that is the point, Mr. Chairman, pay higher wages—to temporary foreign agricultural workers than they do to their own local folks; namely, the domestic farm labor. In my judgment the authority for this action clearly belongs to the Congress and in my judgment not the Federal regulators.

Similar legislation, H.R. 2984, has been introduced in the House of Representatives by my good friend and colleague, Congressman Dan Daniel of Virginia. His bill is currently pending before the Subcommittee on Immigration, Refugees and International Law of the House Judiciary Committee.

In years past, many American farmers, including those in Virginia, have hired foreign nationals at required Federal wage rates to harvest crops. They have taken this action because many domestic farmworkers do not desire to work in certain jobs.

Virginia farmers have spent hundreds of thousands of dollars in the last few years in the process of securing the employment of qualified and able temporary foreign workers. The Department of Labor requires farmers to nationally recruit domestic farmworkers who are willing, ready, and able to do the often arduous and strenuous farm tasks required on the farm.

Only after the Department decides that domestic workers are unable and unavailable for this work will it certify to the Immigration and Naturalization Service that domestic workers are not available, thus authorizing the employment of temporary foreign nationals.

The adverse effect wage rate imposed by the Department of Labor on our farmers is not achieving the Department's stated purpose of "preventing the employment of these aliens from adversely affecting the wages of similarly employed U.S. workers," since the Department certifies that domestic workers are not available.

As I have implied, the Labor Department establishes the adverse effect wage rate for foreign farm labor through regulation rather than through legislation, a fact which I find very troubling.

In 1968, under the authority of section 214 of the Immigration and Naturalization Act, the Department of Labor first began using the current methodology in determining the adverse effect wage rate. The formula which the Department of Labor devised for establishing the adverse effect wage rate involves the averaging of all earnings of all agricultural field hands and livestock workers in each State in which foreign supplementary seasonal workers are used. By this methodology, the Department of Labor establishes in each State, on a State-by-State basis, a seasonal hourly wage rate as the adverse effect wage rate.

On March 27, this year's 1981 adverse effect wage rate was calculated in such a way as to result in a $3.81 rate, which is a hefty 30 cents more than the wage last year and 46 cents higher than the national minimum wage rate of $3.35, set as such in January of this year. In other words, this is an 8.6-percent increase.

The intent of the regulations evidently is to induce the American farmer to hire domestic agricultural labor at the standard minimum wage rather than to import farm workers. This inducement is the requirement under the Federal regulations that the farmer must pay the alien workers more.

It is easy to see that the adverse effect is creating a devastating effect on several important segments of the agricultural production in Virginia, particularly those of tobacco and apple harvesting. Many small growers may be driven out of business by this illogical and inequitable situation, which requires that the average hourly wage rate for piece-rate-hired agricultural workers become the minimum wage for users of temporary foreign workers.

That the adverse-effect wage rate sets an artificial wage rate only for users of temporary foreign farmworkers is a point worth noting. No such rate is required to be paid by users of any other temporary or permanent alien workers, with respect to which groups the Department requires only that the prevailing wage rate be paid.

The real irony is that temporary foreign farmworkers are the only class of imported labor for any job that must, under Federal regulations, be paid higher wages than domestic workers. In addition, any farmer who employs temporary foreign nationals must pay all other employees—even part-time domestic workers—the same wage. This creates an inequitable situation of varying wages paid to employees who may work on adjoining farms.

In other words, the farmer must pay a penalty in higher wages for hiring foreign workers. That puts the farmer in a no-win situation. Because he cannot get enough domestic farm laborers to harvest his crops, he is forced to use foreign agricultural workers at the higher pay rate, creating a serious economic hardship in his efforts to produce the highest quality and quantity of commodities at reasonable prices for the consumer.

These regulations are a problem not only for the American farmer, but for everyone, for they are artificially driving up the cost of food at the supermarket in every American household. They also create a certain disadvantage for the United States in international markets because of higher food prices.

Mr. Chairman, the regulations establishing these adverse effect wage rates are unconscionable and must be abolished. Clearly, other alternatives that this very committee is examining are preferable to the current status quo. I urge you and the members of this committee to seriously consider the merits of S. 1076.

And I thank you, Mr. Chairman.

Senator SIMPSON. I thank you, Senator, and you may be assured that we will be considering the aspects of your proposal.

Do you have any figures, or if your staff could present us and we could obtain that, too. There must have been a significant increase in the numbers of H-2 workers brought into Virginia in the last 5 years. Would that be correct? That would likely be so.

Senator WARNER. I will get that figure.

[The material referred to follows:]

Mr. Chairman, the increase in H-2 workers has increased significantly in the past five years. However, the total amount of H-2 workers in the Commonwealth of Virginia directly corresponds to the quality of tobacco and apple harvests each year, as well as to the availability of domestic workers (as previously discussed).

Only one county, Frederick County, retains H-2 workers for the purposes of apple harvesting. In 1976, the first year they retained the workers, there were 514; in 1977, 584; in 1978, 824; in 1979, 978 (a particularly good year for the apple crop); in 1980, 785; and in 1981, 808.

The tobacco industry in Virginia is concentrated in southside, where a variety of counties employ H-2 workers for tobacco picking. Since 1979, the first year Virginia retained H-2 workers, there have been a little more than 1,000 foreign nationals working in the tobacco industry in Virginia.

I hope that these additional facts and figures adequately address your question.

Senator SIMPSON. Are they mostly in tobacco?

Senator WARNER. Tobacco and apples.

Senator SIMPSON. The apple crop?

Senator WARNER. Yes, sir.

Mr. Chairman, I own an apple farm. As a matter of fact, I picked apples on that farm 35 years ago as a boy for 8 cents a bushel. And I know how hard it is to do that job. And regrettably, a lot of the local folks just do not want to do it any more. So I can speak from some firsthand knowledge.

Senator SIMPSON. That is a large cash crop in Virginia, is it not?

Senator WARNER. Very substantial.

Senator SIMPSON. Tobacco and apples?

Senator WARNER. Those are the principal areas.

Senator SIMPSON. Where the H-2 program has been used.

Well, that is very helpful to have that information, and that adverse effect wage rate is a complex issue. And of all the States in the Union of which it obviously has an impact, certainly it is having the most bizarre impact in the State of Virginia. So we will pursue it.

And I appreciate very much your testimony and we will be looking forward to working with you as we form up the legislation.

Senator WARNER. Mr. Chairman, I want to correct the record. I said 30 and it was 43 years ago.

Senator SIMPSON. Well, the record will be so corrected. [Laughter.]

Thank you, John.

Senator WARNER. Thank you, Mr. Chairman.

Senator SIMPSON. Let me make a suggestion. We are a little bit ahead of schedule and there is a rollcall vote there. I may go take that now and then we will come right back and take you, Dr. Martin.

Let me make sure that there is such a vote, so we will not interrupt your testimony. And then we will go right on into our regular time, and even accelerate our schedule a bit. So I would state that the next witness on the H-2 program is Dr. Philip Martin of the University of California at Davis. And we will take a brief 10-minute recess, and I will cast my vote and return and be back on schedule. Thank you.

[Recess.]

Senator SIMPSON. The committee will come to order, and we look forward to the testimony of Dr. Philip Martin. It is nice to see you, sir.

STATEMENT OF DR. PHILIP MARTIN, ASSOCIATE PROFESSOR OF AGRICULTURAL ECONOMICS, UNIVERSITY OF CALIFORNIA AT DAVIS

Mr. MARTIN. I am Philip Martin, associate professor of agricultural economics at the University of California at Davis.

I have one main point to make today. That main point is that agriculture is at a crossroads. The farm-labor market is being tugged in opposite directions. Some farmers across the country have reformed their labor management systems to offer better jobs to smaller numbers of Americans and legally present aliens. Other farmers are relying on an increasingly illegal and therefore uncertain labor supply, hired directly and through farm-labor contractors.

If public policy does not give a clear signal that the cheap alien labor era is coming to an end, the farm-labor market will be tugged downward, at least in specific areas, and the farm-labor problem will continue to fester.

I want to stress the heterogeneity of American agriculture. There are many agricultures and most have no farm-labor problem. Almost half the Nation's farm work involves tending livestock and doing maintenance and repair work. Most of the hired farm workers doing these jobs are white Americans. Alien workers, legal and illegal, are concentrated in the seasonal harvesting of fruits and vegetables.

There is no general shortage of labor in fruit and vegetable agriculture. Instead, there are specific shortages of labor. California has microclimates that produce dramatic weather changes in areas that are only 30 miles apart. Similarly, the State's agriculture has a series of microlabor markets. Some crops and areas have ample supplies of mostly legal harvest workers, for example, lettuce and grapes use mostly legal harvest workers.

Other crops, like citrus, have legal and illegal workers working side by side or on adjoining farms. Some crops, for example raisins and olives, rely mostly on illegal workers. Reasons for this crop by crop variance in dependence on illegal aliens are going to get closer scrutiny in a proposed University of California research project.

It appears that growers who would face massive losses if their labor supplies were interrupted, perhaps because the crop cannot be stored in the field, can and will change their labor management systems to maintain a legal work force.

The existence of farmers who express no need for alien workers and who privately oppose a large-scale guest worker program shows that there is an alternative to alien labor in agriculture. The policy questions facing the Congress are whether to end dependence on alien labor in agriculture and how to phase out or improve the administration of the temporary worker programs that might remain.

The written testimony briefly farmwork force and outlines the farm labor problem. I will summarize it and then answer questions on the situation in California.

Most of the Nation's farmwork is done by the Nation's 2.5 million farmers and their families. During an average week, there are about 1.3 million jobs for hired farmworkers. Some jobs are filled by one person all year, for example, people who work on dairies and feedlots. But many harvest jobs are filled by several persons within just several months.

The average job slot on a farm is filled by two people, and that gives a total annual hired farmwork force of about 2.6 million persons. That 2.6 million has not changed much since the late 1960's.

There are three important concepts in farm labor statistics. The first is how many hours of work are done; second, how many job slots are available to hired farmworkers; and third, how many people fill those job slots.

Most hours of farmwork are done by farmers. If the 4.6 billion hours of work that are needed on farms each year were done by full-time people, the total number of people in agriculture would be about 2.3 million. But the total number of people doing farmwork, farmers and hired workers, is more than twice that full-time equivalent, because many farmers and farmworkers do nonfarmwork and because many farmworkers do not work year round.

If we make some estimates about how long the average farmer works, we would find that about 60 percent of all the Nation's farmwork is probably done by farmers, the picture goes something like this: Just as about 10 percent of all farms account for about 69 percent of all farm sales, so a minority of all farmers do most of the Nation's farmwork.

The farmworker story is similar. The picture that emerges from farm labor statistics indicates that a great variety of people share the "farmworker" label. The often white, year-round segment contributes most of the total hours done by hired farmworkers.

The more ethnic seasonal work force is hard to summarize. Some seasonal workers are usually employed in nonfarm jobs, but do seasonal farmwork because they like to work outdoors, they are on temporary or seasonal layoffs from their regular jobs, or because they earn high wages for doing farmwork. Some seasonal farmworkers want to work only 6 or 8 months each year. However, other seasonal workers struggle to maintain themselves with a series of farm and nonfarm jobs and would welcome year-round farm or nonfarm jobs. The casual work force that works less than 3 months during the year includes a variety of people, including students, housewives, retired persons, and a variety of other persons.

The major farm labor problem is the need for a large number of short-term workers. Most farmers need large seasonal work crews and never considered seasonality an insurmountable problem because they assumed that a labor force able to accommodate itself to seasonal labor requirements would always exist.

However, society has come to the conclusion that a farm workforce of such dimensions or such magnitude cannot earn incomes that meet or exceed minimal standards. The American dilemma is whether and how to assure farmers enough labor to produce their crops cheaply and to enable farm workers to earn incomes high enough to satisfy minimal living standards.

Most farmers want a reserve army of workers because most farmers simply discharge their workers when the harvest is completed. The next season, workers must search anew for a series of jobs while farmers worry if harvest workers will be available. Since workers sometimes live in another State, distance compounds the matching problem. Traditional labor-management practices increase uncertainties for both farmers and workers.

These statistics paint a picture which shows that the farm labor market is now more heterogeneous than ever before. Some farmers have adopted labor-management systems that encourage workers to stay with them, things like written personnel policies, training and advancement opportunities, and high wages and fringe benefits.

However, many farmers still continue to expect a crew of unskilled workers to appear at harvest time. These farmers cannot or will not revise their labor systems to attract and keep qualified American workers. These farmers argue that alien labor is the only way to assure Americans a steady supply of low-cost food.

The basic problem with making legal and illegal alien farm workers available is that aliens permit farmers to expand production beyond levels that can be staffed with American workers willing to work at prevailing wages. The H-2 program for apple harvesters illustrates the general alien labor problem. Most apple growers have no system to recruit farm workers. All harvesters are paid piece rates and those workers who are unable to pick fast enough to earn at least the minimum wage are terminated.

The H-2 program is a labor recruitment system that guarantees qualified harvesters to apple growers. Without alien workers, apple production would decline for at least a few years until farmers recruited and trained other workers or switched to mechanical harvesting. However, the availability of alien workers encourages farmers to plant more apple trees and not really worry about getting harvest workers.

The apple story illustrates the main problem with all guest worker programs: the alien workers are a subsidy to their employers. Farmers would have to pay more to Americans if they wanted to continue growing crops that now require alien workers. If the Government guarantees farmers an alien labor supply, the farm labor market is distorted, making it difficult to end dependence on alien workers.

For example, the continued availability of legal and illegal alien apple harvest workers has slowed the switch to dwarf apple trees, whose fruit can be picked without ladders, insuring a future need for alien apple pickers.

It is always easy to find an emergency harvest justification to admit alien workers, but it is very hard to terminate an alien worker program after aliens become the main source of labor for selected farmers.

Farmers now get a variety of subsidies in the form of tax concessions, interest concessions, some direct cash payments and some import protection. The alien labor issue raises the question as to whether or not farmers should also get the wage subsidy that comes with alien workers.

I think that the longrun cost of a large-scale alien labor program to farm workers, to farmers, to agriculture, and society at large outweighs the shortrun benefits such a program promises. Instead of a large-scale program, I recommend that the H-2 program be modified to admit limited numbers of aliens on a crop and area basis. The problem, of course, is still going to be to figure out how to make H-2 program transitional.

The 1950's witnessed a decade of migration from the farm to the city. The 1960's began the process of including farm labor in social welfare legislation, eroding the differences between farm and nonfarm labor markets. The 1970's saw the beginnings of government sanctioned union activity and public and private efforts to upgrade farm jobs.

The central question in the 1980's is what role alien labor is going to play in agriculture. If we continue to employ legal and tolerate illegal alien workers in agriculture, we will enlarge the wedge which is now separating farm and nonfarm labor markets.

Thank you.

[The prepared statement of Dr. Martin follows:]

PREPARED STATEMENT OF DR. PHILIP MARTIN

I am Philip Martin, Associate Professor of Agricultural Economics at University of California, Davis. My main point today is that agriculture is at a crossroads. The farm labor market is being tugged in opposite directions. Some farmers have reformed their labor management systems to offer better jobs to smaller numbers of Americans and legally present aliens. Other farmers are relying on an increasingly illegal and therefore uncertain labor supply, hired directly and through farm labor contractors. If public policy does not give a clear signal that the cheap alien labor era is coming to an end, the farm labor market will be tugged downward, and the farm labor problem will continue to fester.

I want to stress the heterogeneity of American agriculture. There are many agricultures, and most have no farm labor problem. Almost half of the nation's farmwork involves tending livestock and doing maintenance and repair work. Most of the hired farmworkers doing these jobs are white Americans. Alien workers--legal and illegal--are concentrated in the seasonal harvesting of fruits and vegetables.

There is no general shortage of labor in fruit and vegetable agriculture. Instead, there are specific shortages. California has microclimates that produce dramatic weather changes in areas only 30 miles apart. Similarly, the state's agriculture has a series of microlabor markets. Some crops and areas have ample supplies of mostly legal harvest workers, e.g., lettuce and grapes.

In other crops like citrus, legal and illegal workers work side-by-side or on adjoining farms. Some crops--raisins and olives--rely on illegal workers. Reasons for this crop-by-crop variance in dependence on illegal aliens will get closer scrutiny in a proposed University of California, Davis research project. However, it appears that growers who face massive losses if their labor supplies are interrupted (because the crop cannot be stored in the field) can and will change their labor management systems to maintain a legal workforce.

The existence of farmers who express no need for alien workers and who privately oppose a large-scale guestworker program shows that there is an alternative to alien labor in agriculture. The policy questions facing the

Congress are whether to end dependence on alien labor in agriculture and how to phase-out or improve the administration of temporary worker programs. This testimony briefly surveys the farm workforce, outlines the farm labor problem, discusses alien labor issues, and concludes that an explicitly transitional guestworker program is the most that can be justified if the nation is ever going to end its dependence on alien labor.

Who Does Farmwork?

Most of the nation's farmwork is done by the nation's 2.5 million farmers and their families. During an "average" week, there are about 1.3 million jobs for hired farmworkers. Some farm jobs are filled by one person all year long--e.g., dairy and feedlot workers--but many harvest jobs are filled by several persons within just two months. The average "job slot" on a farm is filled by two workers, for a total annual hired farm workforce of about 2.6 million persons. The total number of hired farmworkers has been stable since the late 1960's.

To understand the diversity of people in agriculture, it is important to distinguish three concepts: hours worked, job slots available to hired farmworkers, and the number of persons actually hired to fill these job slots. About 4.6 billion hours of work are performed on America's farms each year. If that work were done by full-time people working 2,000 hours each, a total of 2.3 million people would be employed in agriculture. But the total number of people doing farmwork (farmers and hired workers) is more than twice this full-time equivalent because many farmers and farmworkers also take nonfarm jobs and because many farmworkers do not work year-round.

If we assume that only half the 2.5 million farmers average 2,000 hours of farmwork each, then about 60 percent of all the nation's farmwork is done by farmers. Just as 10 percent of all farms account for 69 percent of all farm sales, so a minority of the nation's farmers do most of the nation's farmwork.

The same story of a minority of workers doing most of the work emerges if we examine the hired farm workforce. Many hired labor needs are seasonal. During peak harvest periods, the hired farm workforce doubles or triples in farm areas. Turnover is enormous. One farmer reported that he hired 200 individuals in one month to keep a 25-person work crew staffed. This ratio of eight workers to keep one job filled during one month is an extreme illustration of the large number of persons who do some farmwork. If the U. S. Army experienced the same turnover, the entire population would have to serve at some time during the year to keep the Army's strength at about 2.3 million.

The picture that emerges from farm labor statistics indicates that a great variety of people share the "farmworker" label. The often white, year-round segment contributes most of the total hours done by hired farmworkers. The more ethnic seasonal workforce is hard to summarize. Some seasonal workers are usually employed in nonfarm jobs but do seasonal farm jobs because they like to work outdoors, they are on temporary or seasonal layoffs from their "regular" jobs, or because they earn high wages for doing farmwork. Some seasonal farmworkers want to work only six to eight months each year. However, other seasonal workers struggle to maintain themselves with a series of farm and nonfarm job and would welcome year-round farm or nonfarm jobs. The casual workforce that works less than three months during the year includes students, housewives, retired persons, and a variety of other persons.

The Farm Labor Problem

The farm labor problem arises from the need for a large number of short-term workers. The farmers that need large seasonal work crews never considered seasonality an insurrmountable problem because they assumed that a labor force able to accommodate itself to seasonal labor requirements would always exist. However, society has come to the conclusion that a farm workforce of such dimensions cannot earn incomes that meet or exceed minimal standards. The American dilemma is whether and how to assure farmers enough labor to produce their crops cheaply and to enable farmworkers to earn incomes high enough to satisfy minimum living standards.

Many farmers would like to hire only professional farmworkers. However, most farmers are "too small" or offer jobs "too seasonal" to raise wages and improve working conditions enough to attract and keep career farmworkers. Farmers' associations, the Employment Service, and farm labor contractors still fail to match workers and farm jobs quickly. Since many harvest jobs require few skills, farmers try to employ everyone who wants to work, including workers with few other employment opportunities. Low farmworker incomes are the result of many people working part-year at low wages.

The vicious circle of seasonality, competitive markets, and low wages perpetuates itself. Farmers must cope with the uncertainties of nature and markets for their crops. Farmers appeal to government and the public for more workers by arguing that they can lose an entire year's income if their crops are not harvested, a loss that raises their costs and possibly food prices. If the farm labor pool is not replenished with American or foreign workers, these farmers argue, some profitable crops will migrate to Mexico and other developing nations, eliminating both harvest jobs and well-paid food processing jobs in the United States.

Farmers want a reserve army of workers because most farmers simply discharge their workers when the harvest is completed. The next season, workers must search anew for a series of jobs while farmers worry if harvest workers will be available. Since workers sometimes live in another state, distance compounds the uncertainty of farmers and workers. Traditional labor-management practices mean uncertainty for both farmers and workers.

Some farmers have restructured their labor management systems to assure a corps of returning farmworkers each year. These farmers believe that farm labor is often wasted today because it is "too cheap." An employer association in California discovered that professional lemon harvesters were three times more efficient than workers drawn randomly from the reserve labor pool. In 15 years, it reduced the total number of pickers hired from 8,000 to 900 and increased the earnings of the remaining farmworkers.

Reforming agriculture's labor management system will require wage increases. However, reform will also require the development of labor management practices that provide farmers with an assured labor supply and job security for workers. Large commercial farmers can most easily offer the wages and job security that professional farmworkers want.

The nation's food system is at a crossroads. Several parts of the food system were built on a cheap labor supply that is becoming more illegal and less certain. Most farmers are buffeted by so many uncertainties that they refuse to consider a new labor supply uncertainty. These farmers urge reliance on alien workers to meet seasonal labor needs, a policy that will drive an even larger wedge between farm and nonfarm jobs.

Conclusions

The farm labor market is more heterogeneous than ever before. Some farmers have adopted labor management systems that encourage workers to stay with them: written personnel policies, training and advancement opportunities, and high wages and fringe benefits. However, many farmers continue to expect a crew of unskilled workers to appear at harvest time. These farmers cannot or will not revise their labor management systems to attract and keep qualified American workers. These farmers argue that alien workers are the only way to assure Americans a steady supply of low-cost food.

The availability of legal and illegal alien farmworkers has encouraged farmers to expand production beyond levels that can be staffed with American workers willing to work at prevailing wages. The H-2 program for apple harvesters illustrates the general alien labor problem. Most apple growers have no system to recruit farmworkers. All harvesters are paid piecerates, and workers unable to pick fast enough to earn at least the minimum wage are terminated.

The H-2 program is a labor recruitment system that guarantees qualified harvesters to apple growers. Without alien workers, apple production would decline for at least a few years until farmers recruited and trained other workers *or* switched to mechanical harvesting. However, the availability of alien workers encourages farmers to plant more apple trees and not worry about getting the harvest workers.

Alien labor is a substitute for an effective Employment Service to match workers and jobs. The availability of aliens also slows the diffusion of the labor management systems needed to attract and keep good workers the development and diffusion of labor-saving innovations in agriculture.

The main problem with all guestworker programs is that alien workers are a wage subsidy to their employers--farmers would have to pay Americans more if they wanted to continue growing crops that now require alien workers. If the U. S. government *guarantees* farmers an alien labor supply, the farm labor market is distorted, making it difficult to end dependence on alien workers. For example, the continued availability of legal and illegal alien apple harvest workers has slowed the switch to dwarf apple trees (whose fruit can be picked without ladders) and mechanical apple harvesters, ensuring a future need for alien apple pickers. It is easy to find an emergency harvest justification to admit alien workers, but it is very hard to terminate an alien worker program after aliens become the main source of labor for selected farmers.

Farmers now get a variety of tax and interest subsidies, some direct cash payments, and some import protection. The policy question is whether farmers should also get the wage subsidy that comes with alien workers. I believe the long-run costs of a large-scale alien labor program to farmworkers, agriculture, and society outweigh the short-term benefits alien workers provide. Instead of a large-scale guestworker program, I recommend that the H-2 program be streamlined to admit limited numbers of aliens on a crop and area basis.

Because labor needs differ from crop to crop and each crop has its own harvest piecerate system, the H-2 labor program should be sensitive to differences between crops. For example, instead of setting a single statewide adverse effect wage rate, these crop differences would suggest that regulation focus on each crop's piecerates. Instead of certifying the labor needs of individual farmers, it may be more efficient to examine labor needs on a crop and area basis and then encourage alien worker recruitment through an employer association. The employer association is more likely to hire a professional personnel manager and could be denied access to alien workers if its farmer members violated labor and immigration laws. I recognize that some of the "bad apples" will violate these laws, but public and private enforcement promises to reduce violations.

The 1950's witnessed a decade of migration from the farm to the city. The 1960's began the process of including farm labor in social welfare legislation, eroding the differences between farm and nonfarm labor markets. The 1970's saw the beginnings of government sanctioned union activity and public and private efforts to upgrade farm jobs. The central question facing the nation in the 1980's is whether illegal immigration should be stopped and the alien reserve army reduced. If we continue to employ legal and tolerate illegal alien workers in agriculture, we will enlarge the wedge that now separates farm and nonfarm labor markets.

Appendix

I would like to offer some general impressions of the farm labor market:

- There are many agricultures, and most have no labor problems.
- There are many people who share the label farmworker--just as a minority of farmers sell most farm products, so a minority of hired farmworkers do most of the hours of hired farmwork done.
- Personnel administration is complex.

  There is enormous turnover in the farm labor force. Most farmers hire everyone who shows up at harvest time and let workers supervise themselves with piecerates.
- Wages are complex. Most workers are guaranteed the minimum wage, but workers know that their efforts and piecerates determine daily earnings. In citrus, these piecerates depend on the height of the tree, the average yield, and the size of the fruit.

  Harvest workers are often idle, waiting for trees and fruit to dry or waiting between picks or until the processor can handle the crop. Some harvest workers are housed by growers. Because workers average seven or eight hours per day, the labor camps have all the problems associated with high-density housing for young single males.
- The old myth was that a hired farmworker could save enough money to become a farmer. Today, some hired farmworkers leave the harvest after 15 to 20 years. The ambitious ones become farm labor contractors or foremen. Others take nonharvest jobs in agriculture or nonfarm jobs. The important point is that virtually no farmworker sees harvest work as a lifetime career.

Senator **Simpson**. Thank you very much, Dr. Martin. That is very provocative material there that you shared with us. And you state that alien labor is a substitute for an effective employment service to match workers and jobs.

Do you have any recommendations for us as to how to improve the effectiveness of the employment service in recruiting U.S. workers?

Mr. **Martin**. I wish I did. The main problem now seems to be that there was in 1973 a consent decree signed by the Department of Labor, and Judge Ritchie—the Judge Ritchie court order, which requires the employment service to tell farmworkers about nonfarm opportunities. Because of that there is an awful lot of suspicion, both by farmworkers and farmers, of the employment service. In other words, few people consider it a legitimate matching device any more.

There are two or three problems. First of all, farmers must really want farmworkers of the type that the employment service can deliver, and oftentimes those workers do not work out. Of every 10 who are referred, maybe only 2 or 3 stay, and they may not stay a whole season. So one problem has to be recognition of the fact that the employment service is not going to produce the same quality of workers as an alien labor program.

The second may be to try to separate within the Department of Labor the employment and training services from the matching service, because it is clear that a lot of the suspicion of the employment service comes from farmers who think that the employment service will wind up taking their workers away. Both training and information are legitimate functions. But mixing the two has not really worked to anyone's benefit, or at least not so far. It has caused as many problems as it has solved.

Senator **Simpson**. You state in your view that the alien labor constitutes a subsidy to employers who hire foreign workers. And we know that there are other Government subsidies to agriculture, certainly. Those have become rather clear to us, if they were not before, in our struggle with regard to the budget and various programs within the agriculture sector. So they are certainly there, and you do describe it as a subsidy.

Are you saying that it should remain in there, or that we should refer to it as a subsidy so that we at least are honestly addressing it? Or should we continue to have it and define it as such and define it with regard to the H-2 program? A little bit more information there, please, would be of help.

Mr. **Martin**. My main point is just to recognize that it is a subsidy. Farmers would have to pay more if aliens were not available.

The main policy question is, should you treat agriculture differently from other industries. For example, if General Motors built an assembly plant, let us say in Wyoming, and advertised for workers at the UAW wage of $11.50 or at the minimum wage and not enough people showed up, and then it came to the Department of Labor and said: Well, we have advertised, we have tried, and not enough people showed up. We need 1,000 and we only have 100 workers. The question would be, would we let General Motors admit aliens to fill those jobs because it may be they would have to pay $15 to induce people to move to Wyoming.

In that case, we would say no, because capital is mobile. Capital can go anywhere and build a plant. And so we would tell GM it made a planning error.

Land is not mobile, but it does have alternative uses. So the main point I am making about the alien labor subsidy is that farmers who grow apples in remote areas make more money per acre growing apples than they would if they grew something else, but their land does have an alternative use.

I think that the main problem in agriculture is to figure out how to target selective subsidies, and so I could see a role for an alien labor program. I think the H-2 program should remain and be streamlined, but that it should be recognized that any large-scale program is going to introducing another large-scale subsidy. As it now stands, the H-2 program is not a large subsidy.

And if one had to rank the uses of H-2's now on a kind of priority basis, it would seem to me that you could rank the woods people and the sheep slightly higher—they are small programs that may eventually terminate. You can rank sugar as something that eventually will be terminated when wages get high enough to encourage a switch to mechanical harvesting.

But the H-2 apple program is one that I think illustrates what can happen when you guarantee a labor supply over time, because engineers tell me that if there were no alien workers there would be much more mechanical picking. But it would require farmers to coordinate harvesting very closely with the processing plants, something that farmers do not have to do when applies are picked by hand.

So the point is, that land has alternative uses. H-2 workers are a wage subsidy. The question is how big a subsidy to make this, and my preference would be to keep it small and selective, as opposed to large and general.

Senator SIMPSON. So if you were to design a transitional guest worker program which would gradually hope to end dependence on alien labor during the period when the new enforcement measures are being put in place with regard to illegal immigration, how might you advise us to structure it so that in fact it would be self-terminating?

Mr. MARTIN. The transitional guest worker program that I think would work best for agriculture is transitional amnesty, in other words, give visas that allow people to enter and leave the country, and at the end of 2 or 3 years permit those people to convert to permanent resident alien status. That would ease the shock of a quick cutoff of alien workers.

On the H-2 program, what I would do is get rid of the State by State adverse effect wage rate and instead set sort of an adverse effect piece rate, which would be more sensitive to local conditions because things vary so much crop by crop and because most people are paid piece rates, I would try to tailor the AEWR to each crop and area.

The second thing I would do is reduce the lengthy certification procedure and substitute for it either a fee that is linked to the duration of the work visa or a payroll tax.

I would encourage employer associations to do the recruitment, to get the association to help enforce labor standards and immigration laws. In other words, if you talk to the growers in California, they recognize that there are going to be some bad apples, as it were, among their members, and they know who they are and they can enforce the rules better than any amount of regulation can.

If you would run certification through those associations and then, with the threat of taking away all alien workers if more than 5 or 10 percent of the members were found to violate labor laws, you may have a more efficient way of enforcing standards than what we now have.

Senator SIMPSON. Certainly I think you might agree, and indicate if you do or do not, that we have the testimony from the Department of Agriculture that the U.S. migrant farmworker population has come down from 400,000 to 200,000 in 10 years, and that there are 300,000 to 500,000 illegal migrant farmworkers.

And certainly the assessment is then clear, is it not, that we have a labor market or a labor market sector which is predominantly illegal? Do you think that is a true statement?

Mr. MARTIN. In agriculture?

Senator SIMPSON. That we have a labor market sector which is predominantly illegal; would that be so?

Mr. MARTIN. There are some crops in some areas where the work force is predominantly illegal. But remember that most farmers and most farmworkers put in most hours of work tending livestock or doing the repair and maintenance and these people are by and large legal.

What I am trying to say is that there is no general illegal alien problem in agriculture. There are specific illegal alien problems in agriculture, even within fruit and vegetable agriculture, where most of the illegals in agriculture are concentrated some crops use them and some do not.

The best example I have is the lettuce farmer who told me he uses no illegals to harvest lettuce but does use illegals to harvest other vegetables. The profits are high enough in lettuce to justify using an all-legal work force, and average harvest wages on his farm were $15 an hour.

Those kinds of differences are hard to capture in a uniform hourly AEWR. That is my main point. Agriculture is heterogeneous. You of course do not hear from the side of agriculture that does not need alien labor. They are not really worried about it. You hear from the side that does.

It strikes me that the overwhelming silent majority is getting along without alien labor, and it would be interesting to know why some farmers need aliens and some do not, even when the work seems very similar.

Senator SIMPSON. I think the clear distinction would be is that, what I am saying is that the migrant farmworker population I think is an illegal, predominantly illegal, the migrant farmworker.

Mr. MARTIN. You have to interpret all of these statistics with an awful lot of caution. In California we had the State read all the social security numbers on which farmers paid unemployment insurance taxes and they came up with 600,000 separate workers, instead of roughly 220,000 which the State has been reporting.

So there are a lot more individuals out there doing farmwork than what we thought. Migrancy is defined as just having residence in one county and working and staying overnight in another. There is a lot of artificial migrancy in California, because a fair number of workers cross county lines in order to live in public migrant housing, where they pay very low rents. So there is a lot of migrancy among legal domestic workers.

No one can make an accurate assessment as to whether or not most of there migrants are legal or illegal. The point is they are very heterogeneous. They have many motives for migrating, and so far as I know there is not enough information to make a judgment one way or the other.

Senator SIMPSON. Well, I thank you very much for your very helpful material which you have given us to process. Thank you, doctor.

The next panel has to do with nonimmigrants and is an administration panel which consists of: Doris Meissner—and I believe she has been detained. But we do have Diego Asencio, the Assistant Secretary for Consular Affairs of the Department of State. And if it is appropriate with you, sir, we will proceed to hear your testimony. And when Ms. Meissner comes we will just have her come right to the table and join you.

It is always good to see you, and it is always even more appropriate to hear the things that you share with us with your background, and I appreciate it.

STATEMENT OF DIEGO ASENCIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE

Mr. ASENCIO. Thank you, Mr. Chairman. And again, with your permission I would submit my prepared statement for the record and give you a quick summary.

Senator SIMPSON. Without objection.

Mr. ASENCIO. Of course, what I am selling today is the nonimmigrant visa waiver bill. I am advocating this from various points of view. One, this bill is a means of relieving the enormous pressures that arise on the visa line where, as a result of an ever-increasing spiral of workload, people wanting to come to the United States, people from countries where we have traditionally not had a problem either of visa issuance or visa abuse, nevertheless require substantial resources to process.

The waiver bill would also bring great advantages in facilitating legitimate legal travel, and it would contribute quite beneficially to our travel and tourism industry and would have a good effect on our balance of payments, and would have a very good effect on our relationships with a number of countries where we already have these privileges going the other way.

We consider this, that is the nonimmigrant visa for certain selected countries, an unnecessary barrier to travel. I am convinced that if we do go for a visa waiver that we would have enormous savings, not only the initial savings which amounts to 121 positions, which is not inconsiderable, but also the increasing savings year by year as the visa demand increases.

And we consider that in effect this is not only an important approach—the waiver bill—but also a necessary one.

I would also like to just momentarily touch on another aspect, that is problems having to do with fraud in our consular function. To put the thing in perspective, in our fiscal year 1980 we processed 455,355 immigrant visas and 7,776,000 nonimmigrant visas. This was at a resource cost of some 484 man-years of consular officer time and 1,274 man-years of foreign service national employee time.

I have gone in my prepared statement in some detail concerning the adjudication process in the event there might be some question on how we go about this.

I want to emphasize our commitment to eliminating fraud and recognizing our continuing obligation, particularly from the Departmental point of view, to assist consular officers in combating fraud. But if I could just review the adjudication process.

The decision to issue or refuse a visa is based on a consular officer's reasoned assessment of an applicant's intentions. Consular officers spend hours every day interviewing applicants, not only to analyze their situation but also to consider it within its applicable cultural, economic and political setting, which plays a major role in the adjudicative process.

We undertake a number of measures to try to limit the aspect of fraud. Training of course is one of the most essential of these. In addition to the regular courses, we also have instituted a system of antifraud workshops, in effect traveling antifraud experts who go around to specific areas where this sort of technical ability is necessary and training people.

We have also made our visa as tamper-proof as possible. We are in the process of instituting a counterfoil system. We have developed a consular antifraud handbook. We are doing everything we possibly can in this area, most recently with the establishment of a specific five-man office in our visa office to work on this particular problem.

Having said all of this and recognizing the arrival of Ms. Meissner, I thank you, Mr. Chairman.

Senator SIMPSON. If you have any desire to summarize that any further, please do so.

Mr. ASENCIO. No, Mr. Chairman. I just would like to make the point that we believe that we are doing a good job in the antifraud area under very difficult circumstances, and that we are not only doing a good job, we are getting better at it. And I think this is an area of which we can be reasonably proud.

Senator SIMPSON. Thank you.

[The prepared statement of Mr. Asencio follows:]

PREPARED STATEMENT OF HON. DIEGO C. ASENCIO

Mr. Chairman:

I am pleased to appear before this body today to discuss matters related to the entry of nonimmigrants into the United States. My presentation will be in two interrelated parts. First, I will briefly discuss our proposal to waive the nonimmigrant visa (NIV) requirement for nationals of certain countries. Secondly, I will discuss ways in which we deal with the problem of fraud in nonimmigrant visa applications.

Proposed NIV Waiver

Our proposed Nonimmigrant Visa Waiver bill would amend the Immigration and Nationality Act (INA) to authorize the Attorney General and the Secretary of State to waive the nonimmigrant visa requirement on a reciprocal basis for short-term business and tourist visitors who are citizens of countries with the best record of compliance with our immigration laws. The rise in standards of living in Western Europe and certain other countries such as Japan, the comparative reduction of international air fares, and (until recently) the decline of the dollar relative to other hard currencies, have all contributed to a phenomenal increase in tourist travel to the United States. Experience has shown that visitors from many of these countries have posed the fewest enforcement problems in terms of our immigration laws. As a result, we are in the position of devoting an ever-increasing effort to processing growing numbers of visitor visa applications by applicants whose qualifications are rarely in doubt.

Eliminating the visa requirement for a large number of legitimate travellers would enable us to make more rational use of our trained and experienced personnel. It would also promote better relations with some of our closest allies and other friendly nations around the world. Many countries, including those in Western Europe which benefit most from tourism, have no tourist visa requirements for Americans and many other nationals.

By eliminating this unnecessary barrier to travel, and the least essential nonimmigrant visa issuance work by consular personnel abroad, we would be able to assign our consular officers more efficiently and rationally to highest priority tasks, thus promoting economy and efficiency in a period of severe budget and personnel constraints. By making travel to the United States simpler and easier, we would increase its volume and contribute to improving our balance of payments. By maintaining appropriate safeguards, we would continue to screen those persons posing security or other concerns to the U.S.

I want to make a special point of the fact that our NIV waiver proposal would not alter essential statutory and other safeguards relating to entry of foreigners into the United States. It limits the waiver to nationals of countries that have not posed a significant enforcement problem, requires an annual review to ensure their continuing eligibility, and would be supported by procedures to refuse entry to undesirable persons. The ineligibility requirements of the INA would remain in force, and the Department of Justice has informed us there is no objection to the proposal from the appropriate domestic security agencies.

Successful implementation of an NIV Waiver Bill pivots on the existence of a mechanism for determining the continued eligibility of qualifying countries. The Department of State has developed a proposed system concept for this purpose, which has been presented to the Immigration and Naturalization Service (INS) for evaluation.

The proposed NIV Waiver System Concept relies mainly on a machine-readable INS arrival/departure form to be completed by the traveling alien and collected by the airlines. This computer-supported system would enable INS to quickly and automatically match departure forms with previously submitted arrival forms in an economical manner. The system would thus provide an efficient and cost-effective way to verify if visitors from eligible countries have overstayed the 90-day period during which they had been authorized to be in the United States. However, it is not designed to track aliens as they travel within the United States.

The principal elements of the proposed concept are: it can be implemented with existing technology; it can be operational within a reasonable time frame; and it can potentially be expanded for the purpose of monitoring the arrival and departure of all aliens entering the United States by air. This could serve a variety of enforcement as well as tourism market analysis and development purposes.

Fraud Problems

While many consular officers at smaller Foreign Service posts must perform several or all consular functions, many of our consular personnel are primarily engaged in visa work. Under the Immigration and Nationality Act, as amended, Foreign Service personnel holding consular commissions are responsible for granting or refusing both immigrant and nonimmigrant visas to foreigners seeking entry into the United States. This responsibility is of great importance, both in terms of both national interests and allocation of resources. In FY 1980, for example, approximately 455,355 immigrant and 7,777,000 nonimmigrant visa cases were processed, at a resource cost of some 484 man-years of consular officer time and 1,274 man-years of Foreign Service national employee time.

In recent years, visa work has become more difficult because of three factors: first, the United States is a nation of well-known freedom and opportunity. Political volatility and economic disruption elsewhere inevitably lead millions to seek entry to the U.S. for temporary or permanent residence; second, the rapidly expanding and highly seasonal number of nonimmigrant visa applications; and third, the increasing prevalence of fraudulent practices and documents. I would like to expand on the last factor.

The typical alien discovered working illegally in the United States normally comes from a country that is experiencing serious economic difficulties. In general, the prevalence of visa fraud is fueled by the same political, social, and economic factors that motivate the entry of undocumented aliens to the United States, with the added dimension of geography and distance. The alien from a country which is contiguous (or nearly so) with the United States usually finds it easier to enter the United States illegally than to obtain an expensive travel document and begin an unfamiliar and uncertain visa process. Our major nonimmigrant visa fraud areas, however, are those in which the visa is an essential element to the entry process.

Many Caribbean nations, some Central and South American countries, and several countries in the Far East account for the great majority of nonimmigrant visa fraud cases. However, many visa fraud problems are also surfacing in the Indian subcontinent and in Africa.

Visa fraud associated with immigrant visas varies from that of nonimmigrant visas in that it concentrates on establishing entitlement to status through documentary evidence. The problem of fraudulent documents in most high-fraud areas is two-fold: the absence of reliable civil documents on a national or state level, and the easy availability of spurious "authenticated" documents at lower echelons of local bureaucracies. Immigrant visa fraud is a general problem with occurrences on every continent.

Department's Anti-Fraud Program

The principal elements of the Department's anti-fraud program involve officer training, support of anti-fraud operations at overseas posts, and an active liaison process in the Department to coordinate our activities with other U.S. government agencies, foreign governments, and interested parties in the private sector.

During their initial consular training at the Foreign Service Institute, consular officers are made aware of ways in which visa applicants will attempt to misrepresent or conceal facts relating to their qualification for visa status or their possible excludability. In the consular training exercises, trainers play the roles of visa applicants who act suspiciously and present fraudulent documents, as well as the roles of bona-fide applicants. After this initial introduction to the nature of fraud, consular officers are briefed in the Visa Office concerning the special problems they may encounter at their posts.

Consular sections themselves have assembled a variety of material to instruct newly arrived officers in the types of fraud most often encountered locally. This material is usually collected in a country Fraud Summary which might also contain case studies of typical frauds, samples of documents, and an analysis of fraud patterns.

In addition to training of new officers and post orientation, the Department has undertaken a series of Anti-fraud Workshops to bring together consular officers from a specific geographic region, experts from the Department, and representatives of other government agencies. The first workshop for officers from the Caribbean and Central America was held in Santo Domingo in May 1980. Other workshops took place in January 1981 in Athens for Near Eastern posts and Manila for the East Asian region, and in September 1981 in San Jose for Canada and Central America.

A variety of anti-fraud programs, tailored to individual circumstances, are in place on the firing line at visa units abroad. Posts have designated fraud officers to coordinate these programs. At larger posts in high fraud areas, the fraud officer's position is a full time job with responsibility for the activities of Foreign Service National investigators, liaison with host government authorities, maintaining the Country Fraud Summary, and analyzing and reporting specific and general intelligence to the Department and the Immigration and Naturalization Service. Many posts maintain files of authentic civil documents, official seals and signatures, as well as of forgeries, to alert officers and Foreign Service National staff to alterations and suspicious documents. In some countries where almost any document is available for a price, the face-to-face visa interview provides clues needed to determine visa ineligibility. For example, the application of a person claiming to be an accountant, who appears nervous, has no knowledge of his profession, and a bank account opened the day before, can usually be decided on in a brief interview in many instances. Finally, counterfoils are used at high fraud posts to ensure the integrity of the visa process and make page substitution and counterfeiting difficult.

At most posts, fraud orientation briefings are given to all officers new to the consular section. Officers are encouraged, as time permits, to sit in on interviews conducted by the fraud investigators of suspected applicants. Cases sent to the fraud unit for investigation are returned to the referring consular officer for adjudication as an additional means of feedback.

In the process of screening of visa applicants, every nonimmigrant must present a valid travel document, a completed application and a photograph. Some nonimmigrant visa classifications, such as student, temporary worker, exchange visitor and intracompany transferee, require a certain approved form or petition. Supporting documentation is often required by consular officers, such as financial evidence, an employment letter or other evidence of the applicant's ties to his or her place of residence. A consular officer carefully reviews the completed nonimmigrant visa application and any supporting documentation to ensure that the applicant is qualified for the visa classification sought, and that the applicant is not ineligible or excludable from the United States under section 212(a) of the Immigration and Nationality Act. To the extent necessary, the applicant is interviewed by a consular officer to obtain any additional information necessary for adjudication. The applicant's name is also run through the Visa Lookout System before a visa is issued to ensure there is no derogatory information concerning the applicant.

The adjudication process and decision to issue or refuse a visa is based on a consular officer's reasoned assessment of an applicant's intentions. Consular officers spend hours every day interviewing applicants not only to analyze their situation, but also to consider it within its applicable cultural, economic, and political setting, which plays a major role in the adjudicative process. Through these interviews profiles are developed to determine which applicants are to be carefully screened. The goal is not to discriminate against any one group, but rather to consider the trends that have clearly been developing at each post with respect to fraud, overstays, and adjustments. During the adjudicative process, consular officers look for indicators on the nonimmigrant visa application form which may signal the possible misrepresentation of information; they examine the reliability of any supporting documents; and they often engage in a personal interview for an in-depth analysis of an individual's eligibility for a visa as well as for signs of possible fraud or misrepresentation. Throughout the process, the consular officer factors in an alien's family, social, cultural, business, financial, and economic interests abroad in making a determination as to eligibility for a visa and/or possible fraud.

While the decision-making process is judgmental, it has proven to be equitable and accurate. However, allegations have arisen that poor screening of visa applicants is a major component of illegal immigration. To investigate this allegation, the Department early this year conducted a scientifically constructed survey of returned B visa recipients. The posts chosen to participate represented a diversity geographically, in types of applicants, refusal rates, fraud patterns, etc. An objective was to ensure the random selection of nationals of each country who had received visas during a specified period in 1980. The Department found the results encouraging: they showed a median overstay rate of 2 percent, thus supporting the view that previous allegations of overstays had been exaggeratedly high.

The role of the Department of State in the visa anti-fraud effort is focussed on backstopping the efforts of posts abroad and coordinating our activities with those of the Immigration and Naturalization Service, other government agencies, and private industry, particularly the airlines. In these efforts we are particularly mindful of the need to ensure a constant flow of information both to and from INS and the Department. We note several recent instances where timely intelligence from posts abroad resulted in the apprehension of aliens attempting entry into the United States. In February 1981, for example, two alien smugglers from a Central American country were apprehended in Tucson, only hours after an alert had been received from our Embassy. In these and other efforts, the Department has received the fullest cooperation from INS.

The Department is totally committed to eliminating fraud, and it recognizes its continuing obligation to assist consular officers in combatting fraud. To be sure, a secure work environment, adequate staffing and appropriate training can go a long way toward reducing fraud perpetrated against the U.S. Government. But more is needed. Consequently, a Consular Anti-Fraud Handbook was recently published to give each individual engaged in consular work another tool for attacking fraud. The Handbook provides consular officers with insights into interviewing techniques, which are so vital to the successful execution of consular work. It also addresses the complementary roles of those engaged in anti-fraud work. Finally, the Handbook is intended to be a repository of post materials related to fraud.

The Department recognizes the continuing need to devote greater resources to counter fraud. As a result, the Visa Office established a Fraud Division (four officers, one secretary) as a separate entity in the Office of Field Support and Liaison this summer. This Division will have more resources to focus attention on the importance of this work, to develop the necessary expertise and to provide field support in this critical area.

Thank you for the opportunity to present the Department of State's views on these subjects. I would be pleased to respond now or later to any questions by the Committee.

Senator SIMPSON. I would now welcome to the panel Doris Meissner, Acting Commissioner of the INS of the Department of Justice. And we are always appreciative of your taking time to share with us the administration's position on these various issues we address on immigration and refuge policy reform. And I will be very interested in your comments today. Please proceed.

STATEMENT OF DORIS MEISSNER, ACTING COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Ms. MEISSNER. Thank you, Mr. Chairman. Excuse my tardiness. You are so on time on this committee, it is absolutely startling.

Senator SIMPSON. Yes. I was only 20 minutes late this morning when I came in. If the Governor of Texas had not been here, I probably would not have been here then. [Laughter.]

Ms. MEISSNER. With your permission, we will introduce our statement into the record and I will make a few summary remarks.

Our testimony on nonimmigrant issues covers three areas. The first is the question of nonimmigrant document control; the second is the matter of foreign student policy; and the third is the issue of the pending visa waiver legislation.

With regard to nonimmigrant document control, this is an area that has admittedly been a very difficult one for the Immigration Service and continues to be one where we are dealing with significant backlogs and with the development of a new system which is not yet on line.

We are, however, placing our highest priority at the present time on automation efforts. We expect to have a functioning and effective nonimmigrant document control program which is automated by January 1983.

Between now and January 1983, we will use under our present system, which admittedly is an antequated one. The purpose for processing the backlogged arrival and departure documents, the document which we refer to as the I-94, is to prepare for introduction of a new system which we believe will be much more effective. However, the new system requires that the data we have on hand now be systematically processed so that we have a continuous record on people coming into the United States.

The area of foreign student policy is also one which, as you know, comes up from time to time as a particularly contentious issue. Specifically, of course, the Iranian student situation that we faced in the last 2 years has been a difficult one, not only for INS but for our Nation. We hear continued calls for effective enforcement against foreign students who violate the terms of their visas and the need for increased control of foreign students.

I would like to say that I think it is very, very important that we keep the matter of foreign students and foreign student admissions into the United States in perspective. In the Immigration Service we are operating under the basic premise that it is strongly in the interests of this Nation to have foreign students in the United States, as it is important economically as far as our universities are concerned, and it is also important as a matter of overall world understanding and foreign policy.

Therefore, we believe that the important thing for us to do with regard to foreign student control is to be certain that we have accountability among the schools themselves which register foreign students. We must have a close working relationship with regard to their admissions criteria and the ways in which they recruit foreign students to come into the United States. And second, we must have accurate and timely information on foreign students themselves.

Only a very small percentage of foreign students actually violate their status, and so our basic interest is that they maintain their status as full-time students in the United States.

We are presently considering a new series of foreign student regulations. We have some pretty specific proposals in mind, and they are being circulated within our own agency, among our district directors and other interested individuals at INS for comment. We believe that in about 30 to 45 days we will be issuing some fairly thorough revisions to the present foreign student regulations for public comment .

As I understand it, you have Dr. Bayard Catron on your schedule for this afternoon. He has done most of the work for us that resulted in these changes, so I am sure you will be going into that with him in some detail.

Basically, the proposed changes call for relying more heavily on the institutions of higher education for themselves for assistance in maintaining information on students as a way of bringing about more effective control of foreign students who are in the United States.

With regard to the visa waiver legislation, we are working very closely with the State Department in planning for its implementation. For example, the automation of the nonimmigrant document control program is based on the premise that the visa waiver legislation will pass and that we will be in a position to support that legislation with the information required to make judgments on visa waiver countries and the individuals who come in without visas under the proposed legislation.

Thank you. I would be glad to answer any questions you may have.

[The prepared statement of Doris Meissner follows:]

PREPARED STATEMENT OF DORIS M. MEISSNER

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to testify concerning Immigration and Naturalization Service (INS) programs for non-immigrant information control and the admission of foreign students, as well as the proposed legislation that would establish the waiver of the visa requirement for some non-immigrants from certain countries.

NON-IMMIGRANT INFORMATION SYSTEM

Non-immigrant information control is among the Service's highest priority automation development efforts. Following receipt of the Price-Waterhouse Study on non-immigrant information requirements, completed last June, Service activity is proceeding on three fronts: (1) bringing the current Non-immigrant Document Control System up-to-date; (2) investigating alternative non-immigrant data capture techniques; and (3) developing an improved non-immigrant information system. These efforts are expected to greatly improve the Service's ability to meet its mission needs with respect to information on the non-immigrant population.

THE CURRENT SYSTEM

Efforts to bring the current system up-to-date are well underway. Multiple contracts have been awarded to process the backlog of form I-94 arrival/departure documents accumulated prior to the end of FY 1981. These documents will be processed by the end of 1982. INS plans to award another set of multiple contracts to process newly arriving data during FY 1982. These contracts will provide for capturing all data on the current arrival/departure document (as opposed to previous methods of partial data capture) and will allow the elimination of the hard copy form. This new FY 1982 data is expectd to be processed within sixty days of the end of FY 1982. These efforts to bring the current system up-to-date are being closely coordinated with the development and implementation of an improved system which will replace our current Non-immigrant Document Control System.

Alternative Data Capture Techniques

Recognizing that one of the larger problems in maintaining an effective non-immigrant information system is capturing the data on more than 10 million arriving and departing non-immigrants, the Service has initiated activity to investigate alternative approaches to data capture as they compare to the more traditional key entry of non-immigrant arrival/departure data. Alternatives will be evaluated in terms of the time required to transcribe the data into a form acceptable by computer, error rates, and the resolution of arrival data with corresponding departure information. The results will then be incorporated into the design of the improved non-immigrant information system.

DEVELOPMENT OF AN IMPROVED NON-IMMIGRANT SYSTEM

The Price-Waterhouse Study, completed last June, identified a variety of informational needs which extend beyond the capability of the existing system. In addition, the study recommended that INS proceed with the development of a new non-immigrant information system and posed three alternative system concepts for INS consideration. These alternatives are viewed as a continuum of increasingly sophisticated systems development and range from a primarily manual system to a fully automated system employing technology to machine-read information from non-immigrant visas. The Sevice has accepted the Price-Waterhouse Study and reviewed it in terms of precise INS system needs. As a result, the Service has set system objectives and initiated the project to develop an improved non-immigrant information system. The new system will be a fully automated system which will incorporate the results of the alternative data capture methods analysis mentioned above. The long-term solution to data capture problems associated with non-immigrant entry.

FOREIGN STUDENTS

The statutory authority for our foreign student program is in section 101(a)(15)(F) of the Immigration and Nationality Act which relates to bona fide F-1 non-immigrant students who seek to enter the United States solely for the purpose of pursuing a full course of study for which they are qualified. That section of the Act also provides for approval of schools by the Attorney General for admission of non-immigrant students.

The student program serves United States foreign policy objectives by exposing citizens of other countries to the institutions and culture of the United States, by helping to cement alliances with other countries, and by transferring knowledge and skills to other countries, particularly those in the Third World. The student program also benefits the American economy and those academic and vocational schools which depend on foreign student enrollments as a major source of tuition revenue. This source becomes increasingly important to those institutions as the domestic student population shrinks.

Adverse public attention was focused on the foreign student program in 1979 and 1980 when American hostages were held by "students" in Iran and political demonstrations were conducted by a small number of Iranian students in this country. There is little evidence, however, that students violate the conditions of their entry and stay to a greater extent than other non-immigrants. To put the student program into perspective, it is important to note that students comprise a very small fraction of the non-immigrants admitted to the country each year. In 1978, for example, students represented only 2.3 percent of the non-immigrants admitted or 187,000 out of more than 8.2 million. In 1979-1980, there were roughly 350,000 non-immigrant F-1 students attending United States colleges and universities, vocational schools, primary and secondary schools, and English language schools.

ACCOUNTABILITY

The Service's objective with respect to foreign students, in accordance with the intent of the statute, is to ensure that they are and remain bona fide full-time students. The key to increased accountability over both non-immigrant students and the schools enrolling them is to achieve and maintain accurate and meaningful information on both the students and the institutions, and to keep the acquired information current and accessible nationwide. Reductions in the backlogs in the Non-immigrant Document Control System and proposed enhancements of the system should bring the Service to the position where it will be able to state with accuracy where an individual student or where groups of students are authorized to be. The Iranian Project demonstrated some of the difficulties and impracticalities of large-scale monitoring of individuals without such a comprehensive system in place.

SCHOOL INVESTIGATIONS AND PROSECUTIONS

The increased proportion of foreign students among the enrollments of some United States educational institutions has led to questionable practices by some schools to recruit and enroll non-immigrant students. Investigative attention has produced prosecutions as well as changes in the way schools are being monitored.

This year, the Service withdrew the authority of one California trade school to enroll non-immigrant students. The decision is currently being appealed in the Ninth Circuit Court of Appeals.

During FY 1981, forty-five schools and five student recruiters were placed under investigation following allegations of administrative and criminal violations of Service regulations. This group consists of 23 universities, colleges, and junior colleges, five academic high schools, and seventeen language and trade schools in seventeen states and the District of Columbia. No derogatory activities were disclosed at eight of these schools.

In nine of the completed cases, where isolated instances of administrative violations were disclosed, the institutions were warned, or are in the process of being warned, to cease the deficient practice.

Grand juries were convened in March 1981 in three judicial districts to hear testimony concerning the activities of one major student recruiter and officials at six of the 45 schools. In May 1981, a professor of criminal justice at a four-year college, who was also the president of an English language school, was convicted. In July 1981, indictments were returned in Pennsylvania charging the professional student recruiter and five officials and former officials of five of the schools and colleges with conspiracy to defraud the United States, concealment of material facts and false statements to American consuls, and mail fraud. One foreign student advisor associated with a four-year college pleaded guilty; the trial of the remaining five individuals is expected to occur in January 1982.

Grand juries commencing November 30, 1981, in two judicial districts will examine the criminal involvement of recruiters and officials of 12 additional schools. Investigation is continuing in the remaining cases.

ACTION AGAINST STUDENT VIOLATORS

In FY 1980, the Service apprehended a total of 13,235 deportable aliens who were students. In the first three quarters of FY 1981, the Service apprehended a total of 4,859 deportable aliens who were students. (Projected FY 1981 total -- 7,700 students.) These figures may be compared with the apprehension of 6,110 students in FY 1979, and 6,813 in FY 1978. It should be noted that most of these students were apprehended in the course of INS visits to places of employment, although some were identified and removed as the result of the review of the status of Iranian students.

Investigations are continuing into a scheme used by foreign students who are ineligible, and who applied for and obtained guaranteed student loans and Basic Education Opportunity Grants. The aliens circumvented the law by falsely claiming to be United States citizens and by avoiding contact with any school officials who might detect their alienage. In September 1981, 27 students were indicted in Rhode Island for defrauding the United States Government of nearly $93,000 in connection with the scheme.

In these ways the Service is maintaining vigilance over foreign students and United States education institutions which abuse the current requirements of the F-1 Student Program.

NEW PROPOSALS FOR STUDENT REGULATIONS

The proposed regulations concerning students and school approvals which we intend to draft will take into consideration that we are operating in an environment of steady or declining resources and that our workload will continue to grow. To that end, we plan to adopt those policies consistent with the goals and responsibilities of the Service which are the least burdensome in terms of paperwork for both the Service and the students, while making more effective use of institutional sponsorship of the students by the schools.

One of the main revisions in our foreign student program would be to return to the policy of admitting students for the duration of their status in the United States. Service regulations require that, upon acceptance of a non-immigrant F-1 student for a full course of study, an approved school issue to the student a Form I-20, Certificate of Eligibility for Non-immigrant (F-1) Student Status. Under current regulations, students are admitted for the period of time necessary to complete the course of study indicated on Form I-20. The control resulting from this procedure, however, is more apparent than real. In reality, a return to duration of status would not enable foreign students to stay in the United States for longer periods of time than under the current regulations. The vast majority of applications for extension of stay for students are approved. Furthermore, under our proposed regulations, the schools would still have to report to us when students terminate their attendance.

Another major revision in our student regulations would require students to provide evidence of admission to another school (with an approved Form I-20) to the school from which they are transferring prior to making the transfer. The schools would maintain the information and provide it to the Service as part of the regular reporting process required by regulation. This would eliminate the necessity of the students' applying to the Service for permission to transfer schools. It would also alleviate the hardship now imposed on bona fide students who currently may lose time from school while waiting for permission to transfer.

A third major revision would prohibit off-campus employment for students whose programs are less than one year in duration and would prohibit employment during the first year for all students admitted for multi-year programs. Students in programs longer than one year would be authorized to work without applying to the Service for permission to do so when certain conditions are satisfied. They would have to demonstrate to school authorities that their education would not be adversely affected. The Authorization would allow a maximum of 20hrs/week during the year.

Although we cannot tell precisely how many foreign students would work under this provision, most vocation and English language students would not be permitted to work, most primary and secondary students are already ineligible to work because of their age, and newly admitted undergraduate and graduate students would also not be permitted to work. We therefore estimate that half of the foreign student population would be ineligible to work under this proposal.

It seems likely that it would be as restrictive as the current policy of granting employment authorization only to students who file applications based upon economic necessity due to unforeseen changes in circumstances. An informal survey has revealed that applications from those who had been in student status for less than six months were virtually all denied, while applications from those who had completed at least one year of school were virtually all approved.

The implementation of the above provisions would eliminate the requirement that foreign students file applications for extensions of stay, school transfers and permission to accept or continue employment. Needless to say, this would make it much less complicated and time-consuming for the students to obtain the benefits to which they are legally entitled. Furthermore, our not having to adjudicate any applications by students for these benefits would reduce the Adjudications workload by approximately 4 percent, or 22 workyears. This estimate is based on FY 1981 receipts.

While eliminating as much paperwork as possible in our foreign student program, we intend to publish stricter regulations relating to schools approved for attendance by non-immigrant students. These regulations would enable us to control foreign students much more effectively. One of the revisions would provide for a one-time recertification process in which all schools seeking to continue their approval to admit foreign students would reapply for approval and reaffirm their intent to adhere to Service regulations. This procedure would enable us to determine exactly how many schools are actually admitting non-immigrant students, to update our information on approved schools, and to ensure that all approved schools are aware of Service requirements.

In addition, implementation of a new centralized automated non-immigrant information control system which would include a student information system would assist us in preventing abuses by mala fide students. We hope to implement such a system by January 1983.

I will be happy to answer any questions about the proposed revisions in the student program. It should be kept in mind, however, that many of the details of our revisions are still under study.

Finally, I will discuss the Department of Justice support of the legislation to authorize a waiver of the non-immigrant visa requirement for short-term tourist and business visitors from designated "low risk" countries.

The requirement to present a non-immigrant visa for admission to the United States as a visitor for business or pleasure would be waived for nationals from certain designated low-risk countries. In order to qualify, the country must extend reciprocal privileges to United States citizens and have a non-immigrant visa refusal rate of less than 2 percent. The bill includes a special provision primarily for national security reasons, authorizing the Attorney General and the Secretary of State acting jointly, to refrain from extending the waiver to any country or to withdraw it at any time from a country to which it has been extended. Approximately 30 countries could presently qualify under these criteria as applied by the Department of State.

The bill further provides for annual review of the rate of exclusion and violation after admission. Any country which exceeds a 1 percent rate of violation would be removed from the list of qualifying countries.

The maximum period for which a visitor may be admitted under the bill is 90 days. There is a provision to bar change of status after entering the United States under this program. Furthermore, a visitor who violates conditions of admission may not again obtain entry without a visa.

We support these amendments for several reasons. First, the legislation will enable the Department of State to better utilize existing resources as a result of the elimination of one step of the present two-step screening process for the countries ultimately affected. Moreover, this simplification of the system may act as an inducement to tourism with the resulting increase to our balance of payments. Second, it presents an opportunity to extend a reciprocal courtesy to four friends abroad, some of whom have been according our citizens similar treatment for many years. Finally, it represents proof of our country's commitment to international travel, a commitment expressed in the Helsinki Accord. The Department of State will discuss the foreign policy and practical implications of this bill.

You are probably interested in what this means to INS operations, Inspections, and Enforcement specifically. With respect to Inspections, it should be pointed out that these amendments provide for a waiver of a non-immigrant visa, not a waiver of the requirement that each alien applying for admission to the United States be inspected to determine admissibility. We do not believe, at this time, additional staffing or resources for the INS will be required. Instead, the INS will work closely with the carrier to elicit the necessary information from the alien with respect to his or her admissibility. It should be noted that only aliens transported to the United States on carriers which have entered into a contractual agreement with INS will be eligible for the waiver. It is anticipated that among the contract's provisions will be the requirement that the carrier ensure that the alien was informed of the conditions of his admission. The carriers share our interest in the success of this program, and we expect their full cooperation. We do not expect there will be a need to devote any additional Enforcement resources to the control and location of aliens who are admitted with non-immigrant visa waivers inasmuch as aliens from the countries to which this special treatment would be extended should not in all likelihood pose a problem.

With respect to the provisions for suspension of the waiver, at this point we anticipate either relying on present statistics concerning enforced departures to calculate the rate of violation, or relying on an improved non-immigrant document control system. If we rely on the non-immigrant document control system, it would provide an additional incentive for carriers to cooperate in verifying departure, since failure to verify could result in suspension of the waiver.

Senator SIMPSON. Thank you very much. That is very helpful.

I think that it has been a concern of the subcommittee members, and I think it was also of the Select Commission, the high percentage of visa abusers among the illegal immigrant population. And with the new proposals for INS nonimmigrant document control, what might we expect in the way of a number of apprehensions that might be made as a result of this new system?

What will be uncovered there? What will we find?

Ms. MEISSNER. I do not want to suggest that we will dramatically increase our apprehensions as a result of an effective nonimmigrant information system. We view that system exactly as I stated it. It is an information system and it ought to be timely. We ought to be able to know within a few weeks of somebody's coming into the United States by accessing a computer data base that he is here, what category of visa he has, and so on.

Whenever we have that kind of a system all of our other activities—our area control work, any references we get from local police agencies, et cetera—will be supported by the kind of backup information which allows us to respond quickly and know what we are doing when we come across aliens who may be in a nonimmigrant status.

The new system is really a support mechanism, a support of enforcement efforts that are ongoing, and as such we should be able to be much more effective within the context of deportation proceedings and other enforcement programs.

Senator SIMPSON. Might I ask just generally when you think that the system will be fully operative, and what is the most significant kind of information that we will receive through the new system that we do not receive at the present time?

Ms. MEISSNER. We project January 1983 for the new system to be up but it will come up in stages. By January 1983 we may not have complete information on all categories of nonimmigrants, but the system will certainly be functioning for visa waiver applicants, assuming that that legislation passes.

It will have a system to access the foreign student population as a first priority. Likewise, we intend to have codes for various security interests, so that the population that the security agencies are interested in can be accessed as one of the first priority groups that we know something about in January 1983.

And the difference is that that information will be what is termed "on line." In other words, we will be able to, as you do at an airline terminal, plug in a name and up on the screen will come the information on what visa category this person has, what country he came from, when he entered the United States, where he said his destination in the United States was, and when he is supposed to be leaving the United States.

From there we can go to alien files and other sources of information to trace further. At the present time what we must do is use a telephone, call into a central location, get a name up on microfilm, and then search for a microfilm record. It is a very, very time-consuming, labor-intensive undertaking, and that should not be the case in the future.

Senator SIMPSON. I would be interested. How many attempted fraudulent entries are currently deterred as a result of airport inspections, and how many come from say land border or sea port inspections?

Ms. MEISSNER. Entries deterred? There is really no way to know that, and I do not suppose that there would be much of a way ever of knowing that.

Senator SIMPSON. Attempted fraudulent entry?

Ms. MEISSNER. In the case of airports, we have a tremendous advantage in that we have participation from the air carriers. It is in the interest of the carriers to bring only people who should be coming to the United States, and they participate heavily in checking people who get on the airplanes or on the ships.

By the same token, we have the assistance and cooperation of the State Department in issuing the visa in the first place. Of course, that is not the case in every instance with land entries. Largely land entries are regulated in an entirely different way.

But one has to assume that the checks by the airlines or the ship personnel, and the checks that the State Department makes in issuing the visas bring about some deterrence. I think we all have to be honest in saying that we know that there is a great desire to violate status among certain groups of people and particularly from certain countries, and that we are unable to prevent that entirely.

Senator SIMPSON. For the record, would you share with us what the INS has in the way of current computer capacity to share information with other agencies, such as Health and Human Services and IRS, to gather additional information on the whereabouts illegal benefits being conferred to nonimmigrants who have overstayed their visas?

Ms. MEISSNER. We have very little capacity to do that at the present time, and that is because we are not up to date in putting our records into any kind of automated form. What we envision is not storing information on the improper use of benefits, on the use of food stamps by nonimmigrants or whatever. But we will have timely information on names and countries and the sorts of things that the agencies that give benefits will find useful for tracing within their own records and doing within their own procedures and systems the kind of work to control the distribution of those benefits.

Senator SIMPSON. I guess one of the problems there for me is if we do not have any way of keeping track of attempted fraudulent entries at airports, how will we know if visa waiver is being abused when it is adopted?

Ms. MEISSNER. Well, under a visa waiver system we would know. We have, as I said, been working closely with the State Department, and I think everybody has agreed that the earliest a visa waiver program would be implemented would be, did we not agree, about 18 months from this past September?

Mr. **Asencio**. That is right.

Ms. **Meissner**. So that gives us a little bit of leeway on our January 1983 implementation date. Therefore, we will have the kind of information on line that the State Department needs in order to do its monitoring of visa waiver and that other assistance agencies need in order to examine their own programs for fraudulent use of benefits.

Mr. **Asencio**. There is another aspect, too, Mr. Chairman. That is that the visa waiver countries are those countries where traditionally we have not had either fraud or even refusal problems or visa abuse problems. So we have selected countries, for instance, with less than a 2 percent refusal rate and are talking about say a 1 percent abuse factor. That would provide a trigger for those countries to fall off the entitlement list should they abuse the privilege conceded to them.

So we do not consider that the countries that we are talking about are part of the problem. We understand that with the perception that immigration policy is out of control it is very difficult to arrive at that judgment. But we think nevertheless that because people are walking across the border is no reason why we have to be examining the tonsils of Englishmen in London or Frenchmen in Paris or Germans in Bonn.

We must compartmentalize and realize that by doing this we would be releasing resources for use in those countries where there is an incidence, a high incidence, of fraud. But in addition to that, as Ms. Meissner says, we are in position to establish a very simple arrival and departure system that would be able to tell us in very short order whether the privilege is being abused or not.

Senator **Simpson**. Well, of course it is exciting to hear about that prospect, from the really, the long string of abuse that we see in that area. And I am heartened about what you are both saying about getting that on line.

But then we have our budget problems. The current budget request of some $400 million for INS during fiscal year 1982, how much of that might likely be expended on nonimmigrant document control? How much do you anticipate expending when that system is fully under operation?

Ms. **Meissner**. There is $1.7 million presently in our budget for the current nonimmigrant document control program. That will be increased by about $800,000 if our budget amendment in 1982 passes. The $800,000 will go to research and development of the new system.

Under the new system, the best costing that we have to go by was done by Price Waterhouse, which did work for us on this issue. The estimates we're working with are $5.9 million a year to be operating a timely and accurate on-line nonimmigrant information system. That, of course, needs to be built into the 1983 budget and the budgets thereafter.

Senator **Simpson**. Now, Diego, back to your testimony and remarks, again I am trying to find out the timeliness. When will the data be available on the effectiveness of the State Department's effort to improve the fraud detection among both applicants for nonimmigrant and immigrant visas as far as the timetable?

Mr. **Asencio**. I have been pondering that, Mr. Chairman, and at this point I am not sure that—you know, we can talk about the magnitude of the effort expended against visa fraud. That is very easy to measure. For instance, we estimate that in this past fiscal year we devoted something like 55 man-years to visa fraud-related activities.

But, to be able to come up with a sort of a running tally of what we prevented or what we found, I find it very difficult to conceive of how we would do that at this point. We are still studying the issue, of course, because I think some sort of indicator is necessary. But it is such an amorphous field and it varies so radically from country to country. In one place, for instance, it is the easy availability of spurious public documents, in another it is counterfeiting, and in another it is something entirely different.

It is very difficult to come up with a system that would really be a faithful reflection of expended effort.

Senator **Simpson**. To what extent is the falsification, actual falsification of documents, a problem among visa applicants?

Mr. **Asencio**. In some societies, Mr. Chairman, it is a considerable problem. There are some societies where I would not trust any public document that was presented. In others it would be just the opposite: I would trust almost any document that is presented. It would vary radically from country to country.

Senator **Simpson**. I think you define that as a slippage, or at least there has been this phrase of a slippage rate which might be acceptable among those who would qualify for the visa waiver. Is that a percentage slippage rate? That of course will differ from society to society, too, I assume?

Mr. **Asencio**. Well, I am not sure we are really talking about a slippage rate. What we are talking about is——

Senator **Simpson**. Those that would slip into illegal status in terms of real numbers.

Mr. **Asencio**. What we propose is that there should be a 1 percent abuse rate that would be a trigger, and that that should really be no more than say 1.5 in any 2 years, to avoid the possibility of a statistical aberration knocking the country off an entitlements list and forcing an early reallocation of our personnel resources unnecessarily.

So what we're talking about is a 1 percent trigger with a 0.5 percent slippage factor to take into account statistical aberrations.

Senator **Simpson**. Let's just take a quick look, then, at the student program. I would ask you both, how do you respond to the suggestion to improve enforcement within the foreign student program that we modify the I-20 form from the unnumbered form, valid perpetually, given free to institutions, to change that to a numbered form good for 1 year and provided perhaps that the schools tote up $10 each on that, as well as a suggestion to require a nonrefundable round-trip airline ticket of all nonimmigrants arriving by air.

How about that?

Mr. **Asencio**. I would defer to Ms. Meissner on the first. I will be happy to address the second.

Ms. **Meissner**. The numbered I-20's. Our sense is that the misuse of the I-20 form has a lot more to do with specific schools and problems with certain recruiting practices which we simply have not monitored over a long period of time. Now, one could go to a series of numbered forms, but having looked at it, our sense is that that might cause more administrative headache than anything else.

We do believe, however, that we have to do a much more aggressive and stringent job in looking at schools and school recruiting practices and really pay attention to the certification that we give schools to enroll foreign students. After all, we have a very potent lever over institutions of higher education, and that is that we give them the certification that allows them to recruit foreign students. We haven't used that lever effectively.

Over the last year as a result, of much more careful scrutiny on the part of the public and Congress on what has been going on in the foreign student business, the Justice Department through certain U.S. attorney's offices, initiated a series of major investigations. We have uncovered some pretty scandalous practices and some wide-ranging investigations are now in various stages in the grand jury system.

We have some convictions, we have indictments coming up, we have more evidence that is being presented to grand juries. That has had a very, very salutary effect throughout the higher education community. After all, college presidents and foreign student advisers are not your normal run of the mill criminal that is used to being hounded by the Federal Government as far as prosecution is concerned, and the deterrence that that is bringing out I think is something that we can count on as a more effective tool than a numbered system such as this.

Senator **Simpson**. I think they have joined athletic directors now in that search. [Laughter.]

How many institutions are given or granted that certification at the present time?

Ms. **Meissner**. I would have to check that number. I don't know. But it is a large number. One of the proposals that we will make with the new foreign student regulations is a recertification, a one-time recertification of all schools in which we review their credentials from the bottom up and then keep up an ongoing monitoring of the practices that the schools employ.

Senator **Simpson**. I think that is an excellent effort on that because I think that has just been overlooked in the process, then student issue, and that that is quite a privilege to be so certified. Indeed, as you say, that is an extraordinary financial advantage to a university and that is one thing they are all interested in at the present time, is how to make the most out of the educational dollar and gather more of them.

Let me ask, then, to what extent, and this is addressed to both of you as you wish to address it, to what extent, if any, you believe that the current ability of a foreign student to adjust status to immigrant once in the United States may contribute to illegal overstay in hopes of getting a job or establishing family equities which would then entitle them to immigrant status.

Ms. **Meissner**. I think that Ambassador Asencio would certainly have some views on that as well. It is our sense that the adjustment of status privilege does feed the possibility of an illegal overstay. If the opportunity were not there, it would clearly curtail some of the overstays, but we know what happens once we say "no adjustment."

The fact of the matter is that that has been tried in the past and it simply results in a bulge in the system someplace else, generally in Canada, for instance, if people are required to go back to another country for one reason or another. Such a plethora of circumstances come up which require exceptions that the exception then tends to drive the rule.

But I might defer to the State Department on that.

Mr. Asencio. I just want to ratify that we agree with everything Ms. Meissner said. We were talking here about our best response to that question, and she stole our thunder.

Senator Simpson. Well, since you were giving me those percentage figures on that abuse rate, can you tell me what that would be in the figure of numbers, to go back to that question? When you say a 1 percent or 1½ percent, can you give me the actual numbers there rather than percentages?

Mr. Asencio. We figure that we are issuing over 7 million nonimmigrant visas a year. We are up to that rate. Now, if we take into account the 28 countries that are eligible on the basis of the percentages we have indicated now, we are probably at better than 3 million visas a year. Now, it goes without saying that there will also be a continual increase in demand and since we anticipate that this proposal would facilitate travel, the number would probably increase.

Now, obviously not all countries are going to fall out of the system, but in the worst case, say everybody did better than 1 percent, of course, we would be talking about 30,000 that would abuse the privilege, and that would immediately eliminate the program.

So I consider that really a minimal risk. I think that is the issue here, the fact that we are talking about countries where the risk is so minimal. The only reason we have gone to the business of the nonrefundable ticket and the arrival and departure system was to reassure those who consider that we in effect were relaxing controls at a point where the public perception was that immigration was out of control. What we were trying to prove by doing that was to indicate that regardless, with regard to these countries there was a way of doing this that would still be fairly secure.

Senator Simpson. Certainly that 1 percent based upon the 3 million is a figure of 30,000, and that is one that can be handled. One percent of the 7 million would be 70,000, and that is another aspect of it, is it not, when you say 7 million?

Mr. Asencio. The 7 million, of course, are the visas we issue all over the world in all societies.

Senator Simpson. There are 28 countries that are on your list now as those we could enter into this?

Mr. Asencio. Those that have a less than 2 percent refusal rate, yes, Mr. Chairman.

Senator Simpson. Well, just a couple of more, here, and wanting to use up the time fully while you are here.

Does the INS anticipate any reaffirmation of its authority to examine school records? This is very interesting to me, these issues about visa waiver and fraud detection and where we are with that, and then the student program, where the INS would have a reaffirmation of authority to examine school records on students suspected of visa violation, and a requirement of schools to release student addresses and telephone numbers upon the INS request. We have understood that that is not always available or that the institutions resist that. What steps might be taken to improve institutional cooperation in that regard?

Ms. **Meissner**. I think there are many steps we can take to improve cooperation in that regard, and we believe we are on that path at the present time. The first important point, it seems to me, that has to be made is that the vast majority of institutions in this country do operate in good faith with regard to foreign student enrollments.

We have always in the past and will more in the future be using the various professional organizations among colleges and universities as well as foreign student advisers and other such groups as a means of creating an ongoing conversation with these institutions. But we also believe, as I stated earlier, that we have to monitor certification more effectively.

We are going to be asking, unless we change our minds dramatically, all of the schools in the United States that have certification to be recertified. In the process of doing that, we are going to review the bona fides again and make absolutely certain in our own minds that schools are willing to play the game according to the rules. We hope to do that by next fall so that the major enrollments in September will occur under a new system whereby everybody will be operating off of the same sheet of music. We have every indication from the institutions of higher education whom we have had conversations with so far, that they welcome that kind of involvement on our part.

Senator **Simpson**. I would think that you have their attention. If those things are occurring, I guess that is the important issue.

Might I ask then, Diego, one other question. What is the prevailing practice among other nations in extending employment opportunities to our U.S. students who are studying abroad?

Mr. **Asencio**. I would have to give you an impressionistic answer.

Senator **Simpson**. Please do.

Mr. **Asencio**. Certainly in most of the Latin American societies that I have seen they are highly restrictive. I understand that in Western Europe, they are also highly restrictive. However, in any number of societies I have been there has been a sort of informal tolerance in certain circles, for instance, to the teaching of English or something of that sort. So that it is always possible to make some money as a student abroad, but to do it legally is devilishly difficult.

Senator **Simpson**. One final one. What information which is currently not available to you in your work and in the consular offices or to the consular officers, what information currently not available would make the job of adjudicating a foreign student visa much more effective in terms of detecting potential abuse? If you would share that so we might consider that.

Mr. **Asencio**. Well, actually, I am not sure that there is any one piece of information. However, to back up something that Ms.

Meissner referred to earlier, what bothers us abroad particularly is the sort of recruitment, or people who are in effect hawking perfectly legal I-20's for schools that are, say, in financial difficulties.

I would say that sort of information which I guess would come under the guise of intelligence on efforts to do that would be essential and would be very helpful to our visa officers to make certain that it is not just an academic exercise but that someone is actually selling status. That is the part that I think that bedevils us more than anything else.

Senator **Simpson**. One final one, I promise, just directed to both of you, because it keeps popping up to the top. We hear proposals presented to us in the form of new legislation that we should or at least ought to look closely at charging fees in the area or increasing the fees that are presently charged to offset the cost of administering our immigration programs and our nonimmigrant visa programs.

What are your views there? Where might we see it appropriate to charge these or increase fees? And you don't have to be specific, but what is your feeling about that concept? We know that the nonimmigrant visa is a very valued document, and a $5 charge or something of that nature. Where are you on that? It would be helpful to have the views of both of you.

Mr. **Asencio**. We have a particular philosophy in the Consulate Bureau. It makes us a sort of an anomalous group in the Department of State. We are the only people in the Department of State who make money, and we are rather proud of that. Our basic philosophy is that we see absolutely no reason why the things we do shouldn't be on a sort of cost basis. I mean we don't really expect to make a profit but we don't see in most instances why we would have to subsidize, say, the issuance of an immigrant visa, or why we shouldn't recoup our costs.

There is another facet of our activities, and that is that most of the things we do are mandated by statute, but we are fairly close now to pretty well recouping our entire consulate costs, I would suspect, once—for instance, the great outstanding exception right now is the cost of the immigrant visa, the immigrant visa fee. We expect action on that fairly soon. So once that is actually in place, the Consular Bureau will not cost the Government a dime, and I think that is a fine objective to shoot for.

Ms. **Meissner**. I cannot match that record.

Senator **Simpson**. You what?

Ms. **Meissner**. We cannot match that record for the Immigration Service.

Senator **Simpson**. I think that is true, you cannot. [Laughter.]

Ms. **Meissner**. As you know, this administration is very interested in user fees as a general concept, and we have been charged with a very comprehensive review of all of the services that we perform and their relationship to fees. We are in the midst of that review right now, and certainly the services that we perform for nonimmigrants, such as extensions of stay or the right to work for foreign students, are ones that we will be offering proposals on as a way of reviewing and adjusting user fees where appropriate.

Senator **Simpson**. Well, certainly to me the thought of doing that is not repugnant. It is rather attractive, actually, and I don't think it would put a burden on the person, an undue burden, if we are talking about something in the $5 or $10 range.

It is a fascinating thing to me that various things I come in contact with in my various duties in this place, small fees such as a $5 fee or a $10 fee to the veteran population on outpatient and inpatient activity amounts to millions, and yet the veterans themselves tell us that that isn't a material part of their health care.

This is another area like that where $5, $10, with these types of numbers could indeed lead to a self-sustaining program in some areas, and certainly a student, a foreign student, out of college, you know, a little ticket item there is not going to force a fellow to drop out of school and could easily defray that.

So I just am appreciative of your views and always appreciate your good testimony and your remarks and your serious material and also your levity from time to time, which is needed in this tedious process.

Mr. ASENCIO. Could I just add one footnote to my previous remarks?

Senator SIMPSON. Please.

Mr. ASENCIO. In our nonimmigrant visa issuance we also on a reciprocal basis charge no fee if there is no fee for Americans traveling to a specific country. I don't consider that really an exception because a benefit is being received. So while I would advocate obviously a fee that would be equal to the cost of the service, I would like to see this flexibility retained.

Senator SIMPSON. I think that is a good discretionary approach.

Ms. MEISSNER. Mr. Chairman, let me add one further footnote as well. You asked earlier about deterring entries into the United States. Perhaps what you are asking about had to do with the turndowns that we make at the ports of entry on people who come in.

Senator SIMPSON. Yes.

Ms. MEISSNER. We do have some information on that.

Senator SIMPSON. Just what Donna told me to say, a male fide identification, so please. [Laughter.]

Ms. MEISSNER. I can give you a few numbers.

Senator SIMPSON. I mean others are going to read this besides we who have become so dazzling in it. [Laughter.]

Ms. MEISSNER. My answer pales in comparison to this exchange.

Last year apprehensions of people that were not allowed to enter as a result of having fraudulent documents were 17,000 at airports; through seaports, 55,000; and through land border points, 585,000. So, it is not inconceivable that people do actually arrive at our shores, and in fact do not enter the United States because something is not in order.

How much that would increase if other systems were in place, it is difficult to speculate.

Senator SIMPSON. Thank you very much. We appreciate your being here.

We will take about a 3-minute break here.

[Recess.]

Senator SIMPSON. We will now proceed again with the foreign student panel, and I hope you heard some of that information that we just discussed. You did, I can tell. It is fascinating.

So we have Bayard Catron of George Washington University. It is nice to have you. And Heather Olson of the National Association of Foreign Student Advisers, and David North—we always appreciate your very informative testimony—Mr. North of the New Transcentury Foundation.

So if you will please proceed under the time limitations, and we will go into some questions.

STATEMENT OF DR. BAYARD L. CATRON, ASSOCIATE PROFESSOR OF PUBLIC ADMINISTRATION, THE GEORGE WASHINGTON UNIVERSITY

Mr. CATRON. Mr. Chairman, I am delighted to appear before the subcommittee to discuss the policies and practices governing the admission and stay of foreign students in the United States. Although I testify this afternoon as a private citizen, my testimony grows out of a study of these issues I conducted last spring as a member of a study team of the President's management improvement council.

I have submitted a written statement and also a copy of the final report of that study for the record, so I will just summarize orally.

First, Mr. Chairman, I believe that the foreign student program continues to serve the national interest. It serves U.S foreign policy objectives by exposing citizens of other countries to the institutions and culture of the United States, by helping to cement alliances with other countries, and by transferring knowledge and skills to other countries, particularly those in the Third World.

The foreign student program also benefits the American economy and particularly those academic and vocational schools which depend increasingly on foreign student enrollments as a major source of tuition revenue as the domestic student population shrinks.

Second, is the foreign student program under control? Are special enforcement efforts warranted? Adverse public attention was focused on the foreign student program during the Iranian crisis. When political demonstrations were conducted by Iranian students in this country, the inability of the Immigration Service to provide timely information on the numbers of Iranian students in the United States and the schools they were attending fostered the impression that the student program was out of control.

The results of the intensive effort to verify the status of Iranian students, however, suggest that the student program was not out of control. The results of that project are as follows. As of May 18, 1981, 88 percent of Iranian students had been determined to be in status, and only 4 percent had been ordered deported or received final orders to depart. The remaining 8 percent includes those requesting asylum and cases still in the hearing process at that time.

Furthermore, there is little evidence that foreign students violate the terms of their admission and stay in greater numbers or percentages than most categories of nonimmigrants. The vast majority abide by the law and return home after completing their studies.

In 1978, students comprised less than 8 percent of nonimmigrants apprehended and only six-tenths of 1 percent of all deportable aliens located. On a proportionate basis visitors are less likely to be apprehended than other categories of nonimmigrants. But excluding visitors, the proportion of students apprehended is somewhat less than the proportion for all other visa categories combined. The numbers game here gets a little bit tricky, and I can elaborate on that in questioning if you desire. Therefore, because of the relatively small numbers and the lack of evidence that they pose a special enforcement problem, I believe that no special enforcement effort directed toward foreign students is warranted.

With or without employer sanctions, Mr. Chairman—and I think this is a very important point—with or without employer sanctions, area control focused on places of employment is clearly a more cost-effective interior enforcement strategy for all illegal aliens than case-by-case investigations of individuals presumed to be out of status.

Third, should INS continue to adjudicate requests for school transfers, for extension of stay and for employment authorization? Our study of this issue concluded that these three types of adjudications could be eliminated either because they were low payoff activities or because they could be handled more efficiently or effectively in other ways. If our recommendations are adopted there will be considerable savings and the burgeoning adjudications caseload will be reduced by a projected 9 percent.

I would be happy to answer questions about the specifics of these suggestions. However, because the question of foreign student employment authorization is probably the single most controversial here, perhaps I should indicate what our recommendation in this area was.

The statute is silent on the issue of foreign student employment. Current regulations prohibit off-campus employment unless it is authorized by INS. We favor a different option which represents a compromise between the extremes of blanket work authorization on the one hand and strict prohibition on student employment on the other, and which simultaneously eliminates INS adjudication of employment authorization applications.

The recommended alternative is as follows: Prohibit off-campus employment for students whose programs are less than one year in duration, and prohibit off-campus employment in the first year for all of those admitted for multi-year programs. Students in programs longer than one year should be authorized to work by appropriate school officials, thus eliminating adjudication by INS.

Fourth, Mr. Chairman, what are the responsibilities of the schools admitting foreign students? What information on foreign students should be maintained? Unlike the vast majority of nonimmigrants, foreign students have what amounts to an institutional sponsor to legitimize their entry and stay in this country, namely, an approved school which has admitted them to a course of study.

There is a statutory provision for school approval and a requirement that schools report student attendance. Unfortunately, the school approval process has not been utilized effectively. I think it is very important that INS adopt the recommendations that we made, the seven specific recommendations that are described in my written statement in order to use the school approval process more effectively.

If the responsibilities of the schools are not clarified, if meaningful penalties, title IV penalties are not adopted or if the regulations are not enforced, the information necessary to ensure that foreign students are maintaining status will not be available.

In conclusion, Mr. Chairman, I believe that the foreign student program continues to serve the national interest and that there is no evidence that special enforcement efforts directed toward students are warranted at this time. I also believe that although no new legislation is needed in this area, management improvements are highly desirable to eliminate adjudications, to develop a reliable foreign student information system and to implement effectively the statutory provision for school approval and reporting.

Thank you, Mr. Chairman. I would be happy to answer any questions.

Senator SIMPSON. Thank you very much.

[The prepared statement of Dr. Catron follows:]

PREPARED STATEMENT OF DR. BAYARD L. CATRON

Mr. Chairman and members of the Subcommittee, I am delighted to appear before you to discuss the policies and practices governing the admission and stay of foreign students in the United States. Although I testify today as a private citizen, my testimony grows out of a study of these issues I conducted last spring as a member of a study team of the President's Management Improvement Council. I will summarize the findings of that study and indicate some of our major recommendations briefly under five headings.

Does the foreign student program continue to serve U.S. interests?

Since the passage of the Immigration and Nationality Act of 1952, it has been national policy to admit nonimmigrants to study in the United States under conditions specified in law and regulation. As early as 1924, there was a statutory provision for admission of students as "non-quota immigrants".

I believe that the foreign student program continues to serve the national interest. It is advantageous to this country as well as to the students themselves and their home countries. The student program serves U.S. foreign policy objectives by exposing citizens of other countries to the institutions and culture of the United States, by helping to cement alliances with other countries, and by transferring knowledge and skills to other countries, particularly those in the Third World. The student program also benefits the American economy, and particularly those academic and vocational schools which depend on foreign student enrollments as a major source of tuition revenue. This source becomes increasingly important to those institutions as the domestic student population shrinks.

Is the foreign student program under control? Are special enforcement efforts warranted?

Adverse public attention was focused on the foreign student program in 1979-80, when American hostages were held by "students" in Iran, and political demonstrations were conducted by Iranian students in this country. The inability of the Immigration and Naturalization Service (INS) to provide information on the numbers of Iranian students in the U.S. and the schools they were attending fostered the impression that the student program was not under control.

A nationwide status verification project was launched, and Iranian students were required to report to INS. The results of this intensive effort provide an important source of information about the extent to which students adhere to the conditions of their stay in the U.S. As of May 18, 1981, 88% of Iranian students had been determined to be in status, including 2,310 (3.6%) who had been reinstated. Only 2,628 (4.1%) had been ordered deported or received final orders to depart. (The remainder includes 3,105 asylum requests, nearly all of which were pending, and 1,864 cases still in the hearing process at that time.)

The results of this investigation suggest that, despite the adverse publicity and the inability of INS to provide information on the numbers and location of Iranian students, the student program was not "out of control".

Furthermore, there is little evidence that foreign students violate the terms of their admission and stay in greater numbers or percentages than most other categories of nonimmigrants. The vast majority abide by the law, and return home after completing their studies. In 1978, students comprised less than 8% of nonimmigrants apprehended, and only .6% of all deportable aliens located. On a proportionate basis, visitors are less likely to be apprehended than other categories of nonimmigrants. Excluding visitors, the proportion of students apprehended is somewhat less than the proportion for all other visa categories combined.

Therefore, because of their relatively small numbers (2.3% of the total number of nonimmigrants admitted in 1978) and the lack of evidence that they pose a special enforcement problem, I believe that no special enforcement effort directed toward foreign students is warranted. For visa violators in general, as well as for those who enter without inspection, area control focused on places of employment is clearly a more cost-effective interior enforcement strategy than case-by-case investigation of individuals presumed to be out of status.

Policies governing the admission and stay of foreign students should not be based on some possible recurrence of a situation similar to the Iranian crisis, nor on an illusory quest for "control over" foreign students. It is neither feasible nor desirable in a free country to track or monitor people on a constant basis.

Policies adopted should be workable and effective in relation to the essential objective of the program. In this case, the principal objective seems straightforward: To ensure that those admitted to F-1 status are and remain bona fide full time students. It follows from this that the Service must have access to timely and reliable information about students, and the capacity to identify them by name, nationality, and school attended. It also follows that enforcement efforts should be focused on those who are not bona fide students rather than on "technical" status violators who are simply reinstated. (Students are frequently reinstated for certain types of status violations, such as simple overstay and transferring from one school to another without prior approval. Such violations are generally not considered sufficiently serious to warrant expulsion. Some 70% of students apprehended in 1978 were reinstated.)

Should INS continue to adjudicate requests for school transfers, extension of stay and employment authorization?

The President's Management Improvement Council study of this issue concluded that these adjudications could be eliminated, either because they were low payoff activities or because they could be handled more efficiently or effectively in other ways. Specifically, the study recommended that:

- INS should return to "duration of status", admitting students to a course of study and authorizing their stay for as long as they remain bona fide students in an approved course of study. The "time certain" regulation which went into effect in February 1981 will add about 4% to an already unmanageable adjudications workload, and will not result in significantly greater "control".

- INS should eliminate adjudication of school transfer requests, which is a low payoff activity. The Service currently approves about 95% of the 50,000 applications a year, generally denying only those who have not maintained their status as bona fide students. The legitimate interest in knowing what schools students are attending is better served--and served far more cheaply--by an information system than by adjudication.

- INS should prohibit off-campus employment for students in programs of less than one year's duration and for students in the first year of multi-year programs. Students continuing beyond the first year should be authorized to work by obtaining written certification from an appropriate school official that the student is bona fide, and that employment (not to exceed 20 hours per week during the school year) will not adversely affect the student's status.

If these recommendations are adopted, there will be considerable savings, and the burgeoning adjudications caseload will be reduced by a projected 9%.

Under what circumstances should foreign students be permitted to work in the U.S.?

Because the question of foreign student employment authorization is probably the single most controversial current issue, a few comments about it are in order.

The statute is silent on the issue of foreign student employment. Current regulations prohibit off-campus employment unless it is authorized by INS. Conditions for obtaining INS approval include certification by an authorized school official: (1) that the student is in good standing and maintaining full time status; (2) that employment will not adversely affect the maintenance of full time status; and (3) that economic necessity due to an unforeseen change in circumstances has been demonstrated. The student also agrees not to work more than 20 hours per week while school is in session; if employment is authorized, the student is automatically granted permission to work full time during periods when school is not in session.

The impacts of the present policy are far from clear. It is not known how many students are working legally in the U.S. today, much less how many are working without authorization. INS approved an annual average of around 30,000 of 35,000 completed employment authorization applications in the three year period 1978-1980 (roughly an 85% approval rate). But it is not known how many of those authorized to work actually found jobs or how long they worked, nor how many may still be working versus those who have completed their studies and returned to their home countries.

A reasonable estimate might be that there are 40-50,000 foreign students working with authorization, and that number or more working without authorization. Put differently, probably between one quarter and one third of all foreign students are employed.

The basic rationale for restricting foreign student employment is to protect American workers. Some foreign students are no doubt filling jobs that American citizens could and would fill if the jobs were available. Moreover, since foreign students are concentrated in temporary and part-time jobs, it is likely that they are competing directly with American high school and college students and other groups suffering relatively high unemployment rates. On the other hand, the total number of foreign students is so small in relation to the total labor market (less than .4%) that an adverse national impact could probably not be demonstrated even if blanket work authorization were granted.

Neither blanket work authorization nor a strict prohibition of foreign student employment seems palatable. Blanket authorization would provide no protection for American students and others in the labor market, and it would open an avenue to employment in the United States that does not now exist. A strict prohibition, on the other hand, would cause extreme hardship to thousands of students who would have to give up their educational programs and alter their career ambitions. In addition, it would tend to undermine the student program itself, since there would be considerably fewer applicants for student visas and fewer would be financially able to complete their academic programs.

At the same time, the current policy seems neither efficient nor effective. There is another option which represents a compromise between the two extremes and simultaneously eliminates the troublesome "economic necessity" criterion and INS adjudication of employment authorization applications. The recommended alternative is as follows:

> Prohibit off-campus employment for students whose programs are less than one year in duration, and prohibit off-campus in the first year for all those admitted for multi-year programs. Students in programs longer than one year should be authorized to work when the following conditions are satisfied: (1) the student has successfully completed one year of the educational program; (2) the student obtains written certification from an authorized school official that he/she is in good standing, and that the anticipated employment will not adversely affect the student's ability to maintain bona fide student status; and (3) the student affirms that he/she plans to continue as a bona fide student, and will not work more than 20 hours per week during periods when school is in session. This written certification would be required at least annually (schools may require it more frequently). Students would be required to carry this document and present it to an immigration officer upon request.

This recommendation has a number of advantages:

> -It retains the conditions in the current policy which relate to the principal objective of ensuring that those admitted as students maintain their status.
>
> -It would eliminate any ambiguity about the use of a student visa as a means of entering the country to seek employment.

-It would eliminate the "economic necessity" criterion which is subject to varying interpretations, and which has not been demonstrably effective as a means of restricting student employment.

-It would permit schools to provide on-campus employment during the first year to that small number of students who become truly needy due to an unforeseen change in circumstances, and if they so chose, to encourage employment related to career objectives in subsequent years.

-It would eliminate INS adjudications in this area (currently 2% of total adjudications), simultaneously saving resources and reducing government intervention in the economy and in the lives of individuals.

-It would not adversely affect the enforcement mission of INS, since students working without certification by the schools would still be subject to apprehension and required departure from the country.

While it is impossible to predict the precise impact of this proposed alternative, it seems likely that the recommended policy would be about as restrictive as the current policy. Recently, a small, informal survey was conducted by the INS Central Office to correlate approvals and denials of work authorization with the amount of time applicants had been in the country. The survey revealed that applications from those who had been in student status for less than six months were virtually all denied, while applications from those who had completed at least one year of school were virtually all approved.

What are the responsibilities of the schools admitting foreign students? What information on foreign students should be maintained?

Unlike the vast majority of nonimmigrants (visitors), foreign students have what amounts to an institutional sponsor to legitimize their entry and stay in this country--namely, an approved school which has admitted them to a course of study. There is a statutory provision for school approval, and a requirement that schools report student attendance.

Unfortunately, the school approval process has not been utilized effectively. School approval forms (I-17) have simply collected over the years in INS district offices, and there has been no systematic attempt to review and update these approvals.

There is no central file of approved schools and therefore consulate officials and inspectors at ports of entry have no ready means to verify school approval.

It is not known how many approved schools are actually admitting foreign students, or the extent to which they are complying with existing regulations. While there are approximately 26,000 approved schools on file, the actual number of active schools is probably considerably smaller. When INS attempted to use I-17 information in 1979 to verify student status in Los Angeles, it was unable to contact over 300 schools out of 1,009 on file.

INS should use the statutory provision for school approval and school reporting more effectively. If the responsibilities of the schools are not clarified, if meaningful penalties for noncompliance are not adopted, or if the regulations are not enforced, the information necessary to support the principal objective of ensuring that foreign students are maintaining status will not be available. The primary source of status information about foreign students is and will continue to be the schools which they are attending. Therefore, the PMIC study made seven specific recommendations in this area:

-Clarify the procedures for issuing I-20s in the regulations.

-Require schools to submit the names, titles, and sample signatures of officials authorized to sign I-20s and to certify students for employment authorization.

-Clarify recordkeeping and reporting requirements and procedures in the regulations. Determine the applicability of the Buckley amendment, and secure a waiver if necessary.

-Review current revocation procedures with a view toward making them more effective. In addition, adopt a set of administrative fines, as recommended by the Select Commission,.to be levied against schools which persistently fail to keep records, to provide periodic reports, or to comply with regulations governing the issuance of I-20s.

-Conduct a one-time recertification process in which all schools seeking continuing approval to admit foreign students reapply. They should be required to affirm their intent to adhere to the regulations governing record keeping, reporting and I-20 issuance, and to inform the Service of changes in designated officials and other pertinent changes.

-Rely on the Department of Education data bases of colleges and universities and of vocational schools to establish the educational legitimacy of schools applying. Data base compatibility should be assured so that updating of information can be accomplished efficiently. (Private primary and secondary schools, and other schools not listed by the Department of Education will have to be treated individually.)

-Centralize the recertification process rather than doing it through district offices. A directory of approved schools should be created and distributed to consulates, district offices and ports of entry. If it is determined to be cost-effective, the data base of approved schools should be automated. The central file should have the capacity to differentiate schools by type and to list them by district. In addition, a mechanism to identify schools which do not submit periodic reports should be developed.

As became apparent during the Iranian crisis, INS does not now have the capability to ascertain the numbers of foreign students in the country, much less the capacity to identify them by name, nationality and school attended. At least this minimum information is necessary to ensure that those in F-1 status are and remain bona fide students.

It is recommended that schools be required to report, within 30 days after each registration period, all F-1 students who have terminated (graduated, transferred , or dropped out) and all new students registered. This procedure would permit a systematic, centralized updating of the student information system and, because it is keyed to the registration period of the schools, would minimize the reporting burden.

INS must depend on the schools to maintain certain information. Much of this is already maintained on all students by most schools for their own internal purposes--such as student address and telephone number, student status (full time/part time), date of matriculation, degree program and major, expected date of completion. Other information specific to foreign students which should be maintained by the schools includes visa type, employment authorization, and termination date and reason (if known). Visa type is particularly important since there are foreign students in many nonimmigrant categories. Finally, authority for INS officers to examine school records on individual students suspected to be out of status should be reaffirmed, and schools should be required to release student addresses and telephone numbers upon request from Immigration officials.

In conclusion, Mr. Chairman, I believe that the foreign student program continues to serve the National interest. Further, there is no evidence that special enforcement efforts directed toward students are warranted at this time. I also believe that, although no new legislation is needed in this area, management changes are highly desirable to eliminate adjudication, to develop a reliable foreign student information system, and to implement effectively the statutory provision for school approval and reporting.

Thank you, Mr. Chairman. I would be happy to answer any questions.

THE PRESIDENT'S MANAGEMENT IMPROVEMENT COUNCIL REPORT
ON
FOREIGN STUDENTS IN THE UNITED STATES

PREPARED BY: Dr. Bayard L. Catron
PMIC Team Member
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FOREIGN STUDENTS IN THE UNITED STATES

Analysis and Recommendations

Background.

Since the passage of the Immigration and Nationality Act of 1952, it has been national policy to admit nonimmigrants to study in the United States under conditions specified in law and regulation. As early as 1924, there was a statutory provision for admission of students as "non-quota immigrants". The student program has been deemed to serve U.S. foreign policy objectives by exposing citizens of other countries to the institutions and culture of the United States, by helping to cement alliances with other countries, and by transferring knowledge and skills to other countries, particularly those in the Third World. The student program also benefits the American economy, and those academic and vocational schools which depend on foreign student enrollments as a major source of tuition revenue. This source becomes increasingly important to those institutions as the domestic student population shrinks.

Adverse public attention was focused on the foreign student program in 1979-80, when American hostages were held by "students" in Iran, and political demonstrations were conducted by a small number of Iranian students in this country. The inability of the Immigration and Naturalization Service (INS) to provide information on the numbers of Iranian students in the U.S. and the schools they were attending fostered the impression that the student program was not under control. A nationwide status verification project was launched, and Iranian students were required to report to INS.

Prior to the hostage seizure, Iran was easily the single largest source country of nonimmigrant students, followed by Japan, Mexico, Venezuela, Canada and Saudi Arabia. In 1978, these six countries contributed 46% of the foreign students admitted to the U.S. (INS 1978 Statistical Yearbook, Table 17.) In 1979-80, there were roughly 350,000 nonimmigrant (F-1) students attending U.S. colleges and universities, vocational schools, primary and secondary schools, and English language schools. (See Appendix, Table 1.)

To put the student program into perspective, it is important to note that students comprise a very small fraction of nonimmigrants admitted to the country each year. In 1978, for example, students represented only 2.3% of nonimmigrants admitted -- 187,000 out of more than 8.2 million. (See Appendix, Table 2.) Historically, investigation of student status violations has not been a high priority for the Service. This continues to be a reasonable posture both because of their relatively small numbers and because there is little evidence that students violate the conditions of their entry and stay in a greater percentage than other nonimmigrants. In addition, border enforcement and interior area control activities focused on places of employment are indisputably more cost-effective strategies than case-by-case investigations of individuals presumed to be in violation of status.

The vast majority of deportable aliens located are those who entered without inspection. Student violators represented only .6% of deportable aliens located in 1978. Moreover, perhaps 70% of those apprehended were reinstated rather than being required to depart. (See Appendix, Table 3.) Students are frequently reinstated for certain types of status violations, such as simple overstay and transferring from one school to another without prior approval; such violations are generally not considered sufficiently serious to warrant expulsion.

The Iranian student investigation, the most intensive effort ever directed toward a specific class of nonimmigrants in this country, provides an important source of information about the extent to which students adhere to the conditions of their stay in the U.S. As of May 18, 1981, 88% of Iranian students has been determined to be in status, including 2,310 (3.6%) who had been reinstated. Only 2,628 (4.1%) had been ordered deported or received final orders to depart. The remainder includes 3,105 asylum requests, nearly all of which are pending, and 1,864 cases still in the hearing process. (See Appendix, Table 4.) The results of this investigation suggest that, despite the adverse publicity and the inability of INS to provide information on the numbers and location of Iranian students, the student program was not "out of control".

The structure of this analysis is as follows: The next two brief sections identify the assumptions underlying the analysis and then the goals, strategies and criteria employed. Then there are three sections dealing in turn with length of stay, school transfer and employment authorization, which are the three areas currently requiring case-by-case adjudication by INS. Then issues surrounding the approval of schools to enroll foreign students are discussed, including requirements for record keeping and reporting student status information to the Service. Finally, the features of a nonimmigrant student information system are discussed.

Assumptions Underlying Analysis.

- The foreign student program continues to serve the national interest; it is advantageous to this country as well as to the students themselves and their home countries. If this assumption is questioned, a more fundamental analysis is warranted to consider alternatives for amending the Immigration and Nationality Act.

- Policies governing the admission and stay of foreign students should not be based on some possible recurrence of a situation similar to the Iranian crisis, nor on the illusory quest for "control" over foreign students. Rather, they should be workable and effective in relation to the essential objectives of the program.

- INS, like other Federal agencies, will continue to operate in an environment of steady or declining resources. At the same time, its workload will continue to grow, requiring difficult decisions to abandon lower priority activities.*

Goals, Strategies and Criteria.

The principal objective of INS with respect to foreign students seems straightforward: To ensure that those admitted to F-1 status are and remain bona fide full time students. It is a direct corollary of this objective that the Service must have access to timely and reliable information about students, and the capacity to identify them by name, nationality and school attended. It also follows that enforcement efforts should be focused on those who are not bona fide students rather than on "technical" status violators.

Unlike the vast majority of nonimmigrants (visitors), foreign students have what amounts to an institutional sponsor to legitimize their entry and stay in this country -- namely, an approved school which has admitted them to a course of study. There is a statutory provision for school approval, and a requirement that schools report student attendance. One basic strategy employed in this analysis is to make more effective use of this institutional sponsorship.

Finally, it is a goal and responsibility of every public agency to focus on those activities which are essential and most crucial to the achievement of its mission, and minimize or eliminate those which have lower priority and lower pay off. Therefore, the criteria used in assessing current policies and alternatives include efficiency (how much "bang for the buck" a given activity has) and effectiveness (whether the activity contributes to fulfilling the mission and principal objectives of the agency). The impacts of current and recommended policies on bona fide students and on approved schools are also considered, with a view toward adopting the least restrictive and least burdensome policies consistent with the goals and responsibilities of INS. It is neither feasible nor desirable in a free country to track or monitor people on a constant basis, and government regulations should impose as little burden as possible, consistent with the public interest, on other social institutions.

Length of Stay.

The most recent regulation affecting foreign students, which became effective on February 23, 1981, stipulates that students be given a "date certain" for departure based on the length of program specified on the I-20. Previously, students were admitted to the country for "duration of status", which authorized them to stay as long as they maintained full time student status in an approved program. The rationale for the new regulation was that it would give the INS needed control over foreign students in order to minimize the "perpetual student syndrome" and to permit the Service to evaluate the legitimacy of courses of study beyond that for which the student was initially admitted.

However, as a practical matter INS is not likely to deny continuation to other approved programs, even in cases where students apply for a second (or third) Masters degree. Other, more extreme cases are sometimes hypothesized and cited as indicating a need for greater controls. But Service employees are not in a good position to assess the validity of educational objectives or the adequacy of reasons for changing them. While the date certain provision will bring more students into contact with the Service, the "control" it provides is more apparent than real.

The date certain provision will generate considerable additional workload since many students will not complete their program in the time allotted. One foreign student advisor reported that it would be reasonable to estimate that half of the foreign students in undergraduate programs require more than four years to complete the degree. There are many legitimate reasons for taking longer than the standard time to complete a degree program: students lose credits when they transfer from one school to another or, frequently, when they change majors within the same school; many foreign students find that they need additional remedial training in English; and illness and other unforeseen circumstances can delay completion. While it is impossible to predict the workload impact with precision, it seems likely that the date certain provision will generate about 75,000 additional requests for extension of stay per year, or 4.3% of total adjudications completed in 1980.

The vast majority of these requests will be approved. There is already a backlog of several months in adjudicating extensions of stay in most district offices, and it appears that there is little to be gained in adding to the current workload. Therefore, return to duration of status is recommended. Another option was considered, in which students would be allowed to continue for a semester or year beyond the allotted time without INS adjudication upon certification by the school that the student was bona fide and the additional time was sufficient to complete the program. This option was rejected because of the wide variety of "programs" and the ambiguity in the term, and because of operational difficulties it would cause.

It is also recommended that the regulations define "timely departure" as 30 days after the date of completion of the program. Currently, the departure date is identical with the completion date. Schools have been informally encouraged to leave "some latitude" in identifying the graduation date on the I-20, which may create inconsistency in applying the regulations. A

30-day grace period, which also should be provided for some other nonimmigrant visa categories, would allow the student to tidy up affairs and depart in an orderly manner.

School Transfers.

Currently, INS adjudicates about 50,000 applications a year for transfer from one school to another. This represents approximately 3% of total adjudications completed. About 94-97% of these applications are approved. (See Appendix, Table 5.) Transfer requests are denied in general only when the student did not attend the school to which he or she was originally admitted or is not able to establish that bona fide student status has been maintained. Students who have violated their status only by transferring without prior approval are generally reinstated when they come in contact with the Service; for example, the vast majority of Iranian students found to be attending the "wrong" school were reinstated. This practice seems appropriate: it serves the principal INS objective of ensuring that F-1 students are in fact maintaining bona fide student status.

Given the high approval rate and the practice of treating violations as minor and "technical", the adjudication of transfer requests is a low pay off activity which should be eliminated. This would not only reduce the adjudications workload by 3 percent, but would also alleviate the hardship now imposed on bona fide students who currently may lose a semester while waiting for Service approval to transfer. The principal argument for continuing to adjudicate transfer requests seems to be that the Service should be in a position to prevent "frivolous" transfers by students who are principally interested in extending their stay in this country. But the Service is not in a good position to question the legitimacy of changes in educational objectives, and in any event denial of transfer requests on this basis is quite unusual.

The Service does have a legitimate interest in knowing what school each student is attending, but this can be accomplished through an information system far more cheaply than through adjudication. Students could be required to notify the Service of transfers, but it seems more efficient and effective to have the schools maintain that information and provide it to the Service as part of the ongoing reporting process described later. Therefore, it is recommended that students be required to provide evidence of admission to another school (an approved I-20) to the school from which they are transferring prior to making the transfer. Students who do not enroll in the new school in the first term for which they are eligible after leaving the previous school would be considered to be out of status.

Employment Authorization.

The statute is silent on the issue of foreign student employment. Current regulations prohibit off-campus employment unless it is authorized by INS. Conditions for obtaining INS approval include certification by an authorized school official: 1) that the student is in good standing and maintaining full time status; 2) that employment will not adversely affect the maintenance of full time status; and 3) that economic necessity due to an unforeseen change in circumstances has been demonstrated. The student also agrees not to work more than 20 hours per week while school is in session; if employment is authorized, the student is automatically granted permission to work full time during periods when school is not in session.

The Service ordinarily accepts the school official's certification of the first two conditions as having face validity. The third criterion is more susceptible to varying interpretations and inconsistent application. While some changes in circumstances (such as the death of a parent or dramatic changes in the rate of monetary exchange) are relatively clear, others are not. There is currently considerable variation in applying this criterion by school officials and by INS district offices.

While the first two criteria are clearly related to the Service's principal objective of ensuring that students maintain full time status, the third is not. It is argued that, since applicants for student visas are required to demonstrate that they have the means to support themselves during the period of study (or at least for the first year), students should be required to demonstrate a change in circumstances before employment is authorized.

The basic rationale for restricting foreign student employment is to protect the American labor market. Some foreign students are no doubt filling jobs that American citizens could and would fill if the jobs were available. Moreover, since foreign students are concentrated in temporary and part-time jobs, it is likely that they are competing directly with American high school and college students and other groups suffering relatively high unemployment rates.

On the other hand, the number of foreign students is so small in relation to the total labor market that an adverse impact could probably not be demonstrated even if blanket work authorization were granted. Conversations with Department of Labor officials revealed no objection to foreign student employment authorization. (However, some concern was expressed about "practical training", which is permitted by regulation under certain conditions after students complete their program.)

It is sometimes argued that foreign student employment has significant adverse effects on local labor markets with high concentrations of students, such as Boston. A survey conducted by the Boston District Office early in 1979 concluded that there were approximately 11,000 F-1 students in colleges and universities in the Boston area. This represents perhaps 6-8% of the total student population and a very small percentage of the labor force. The Boston office adjudicated 3,500 employment authorization requests during the three year period 1978-80, and approved 75% of them. (Boston's 25% denial rate is higher than the national average, while its 3-4% denial rate for student transfers is about average. See Appendix, Table 5.)

It is not known how many students are working without authorization, of course, but several sources have suggested that a reasonable estimate would be at least as many as those authorized to work, and perhaps twice that number. Nationwide, this would translate into a range of 75-100,000 foreign students working at any given time, or roughly 20-30% of the total foreign student population. This number would increase by some unknown amount if blanket work authorization were granted. Students supported by wealthy parents or sponsored by their home governments would not be likely to enter the labor market, and of course not all those seeking employment would find it.

Another argument sometimes offered by those who favor a restrictive policy toward foreign student employment is that blanket authorization would constitute a "draw" factor, encouraging larger numbers of nonimmigrants to enter the country on student visas with the hope of finding employment. Those who favor a less restrictive policy respond that, if true, this would be acceptable as long as those entering as students maintained bona fide student status.

The current policy lies between the logical extremes of blanket work authorization and strict prohibition of foreign student employment. It has the advantage in theory of maintaining a restrictive posture while providing relief for truly needy students. No doubt some would make the political or ideological judgement that the percentage of applications approved and the numbers of students given authorization are too high, and others would argue that the "economic necessity" criterion is too strict. Such judgements aside, there is reason to question the efficiency and effectiveness of the current policy. While some unsuccessful applicants and other foreign students are no doubt deterred from entering the labor market because it would violate their status and jeopardize their educational goals, many others are not deterred. It is far from clear that the economic necessity criterion has been effective in limiting student employment. And given the high approval rate, the pay off may not justify the considerable effort expended by both school officials and INS in adjudicating these applications.

Either blanket work authorization or a strict prohibition would eliminate the costs of adjudicating applications. But either of these would generate considerable political opposition. Blanket authorization would provide no protection for American students and others in the labor market, and it would open an avenue to employment in the United States that does not now exist. (Those who enter with a valid visa but with the covert intention of working illegally in this country are currently probably more likely to enter as visitors than as students.) A strict prohibition, on the other hand, would cause extreme hardship to thousands of students who would have to give up their educational programs and alter their career ambitions. In addition, it would tend to undermine the student program itself, since there would be considerably fewer applicants for student visas.

Therefore, neither of the extreme options seems palatable, and yet the current policy seems inefficient and ineffective. There is another option which represents a compromise between the two extremes and simultaneously eliminates the troublesome "economic necessity" criterion and INS adjudication of employment authorization applications. The recommended alternative is as follows:

> Prohibit off-campus employment for students whose programs are less than one year in duration, and prohibit off-campus employment in the first year for all those admitted for multi-year programs. Students in programs longer than one year should be authorized to work when the following conditions are satisfied: 1) The student has successfully completed one year of the educational program; 2) The student obtains written certification from an authorized school official that he/she is in good standing, and that the anticipated employment will not adversely affect the student's ability to maintain bona fide student status; and 3) The student affirms that he/she plans to continue as a bona fide student, and will not work more than 20 hours per week during periods when school is in session.

This written certification would be required at least annually (schools may require it more frequently). Students would be required to carry this document and to present it to an immigration officer upon request.

This recommendation has a number of advantages:

- It retains the conditions in the current policy which relate to the principal objective of ensuring that those admitted as students maintain their status.

- It would eliminate any ambiguity about the use of a student visa as a means of entering the country to seek employment.

- It would eliminate the "economic necessity" criterion which is subject to varying interpretations, and which has not been demonstrably effective as a means of restricting student employment.

- It would permit schools to provide on-campus employment during the first year to that small number of students who become truly needy due to an unforeseen change in circumstances, and if they so chose, to encourage employment related to career objectives in subsequent years.

- It would eliminate INS adjudications in this area (currently 2% of total adjudications), simultaneously saving resources and reducing government intervention in the economy and in the lives of individuals.

- It would not adversely affect the enforcement mission of INS, since students working without certification by the schools would still be subject to deportation proceedings.

It is difficult to identify precisely the effects of such a change in policy on the number of foreign students working, since much basic information is unavailable. For example, there is no definitive information about how many students are admitted to programs of less than one year's duration, or how many students in each category now seek work authorization. Nonetheless, the impacts of the recommended policy can be estimated. The vast majority of vocational and English language students would be ineligible for employment; of course many primary/secondary students are already ineligible due to age. Newly admitted undergraduate and graduate students would also be ineligible. Therefore, perhaps half of the foreign student population would not be eligible to work at any given time. It is not known how many of the remaining half would seek employment.

It seems likely that the recommended policy would be as restrictive as the current policy. Recently, a small, informal survey was conducted by the INS Central Office to correlate approvals and denials of work authorization with the amount of time applicants had been in the country. The survey revealed that applications from those who had been in student status for less than six months were virtually all denied, while applications from those who had completed at least one year of school were virtually all approved.

Approval of Schools to Admit Foreign Students.

There is a statutory provision which limits the right to admit and enroll foreign students to "approved schools", and requires such schools to report on foreign students attending. The schools are direct beneficiaries of the foreign student program, and many rely increasingly on foreign students as a source of tuition revenue. The school approval requirement establishes institutional sponsorship for, and an important potential source of information about foreign students in the country. It also serves as a protection for students by ensuring that the schools that they attend offer bona fide educational programs.

Unfortunately, the school approval process has not been utilized effectively. School approval forms (I-17) have simply been collected over the years in INS district offices, and there has been no systematic attempt to review and update these approvals. There is no central file of approved schools (although the development of such a file was recommended in 1976) and therefore consulate officials and inspectors at ports of entry have no ready means to verify school approval. Currently, school approval is not verified until after students are admitted to the country (if then).

It is not known how many approved schools are actually admitting foreign students, or the extent to which they are complying with existing regulations. While there are approximately 26,000 approved schools on file, the actual number of active schools is probably considerably smaller. When INS attempted to use I-17 information in 1979 to verify student status in Los Angeles, it was unable to contact over 300 schools out of a total of 1,009. In addition, the Department of Education directories list only 3,190 colleges and universities in the U.S., and less than 8,000 postsecondary vocational schools. While there are many more primary and secondary schools than that, they admit relatively few F-1 students.

Some schools have been lax in controlling issuance of the form admitting students in their programs (I-20), which provides the basis for a prospective student to apply for an F-1 visa, and there is evidence of fraudulent use in some cases. Moreover, there has been some confusion about reporting and recordkeeping requirements on the part of the schools, and the requirements have not been consistently enforced. Part of this confusion has been due to differing interpretations of the Buckley (privacy) amendment and the schools' responsibility for protecting information about foreign students.

The primary source of status information about foreign students is and will continue to be the schools which they are attending. This becomes even more important if the earlier recommendations to eliminate the three types of adjudications are accepted. Therefore, the following recommendations are made:

- Clarify the procedures for issuing I-20s in the regulations. These procedures were outlined in the recent proposed rule (which has not been put out for comment).

- Require schools to submit the names, titles, and sample signatures of officials authorized to sign I-20s and certify students for employment authorization. (In general, the number of officials should be no more than six.)

- Clarify recordkeeping and reporting requirements and procedures in the regulations. Determine the applicability of the Buckley amendment, and secure a waiver if necessary.

- Review current revocation procedures with a view toward making them more effective. In addition, adopt a set of administrative fines, as recommended by the Select Commission, to be levied against schools which persistently fail to keep records, provide periodic reports or comply with regulations governing the issuance of I-20s. A reasonable fine might be $1000 for the first offense and $2500 for the second offense, with revocation procedures initiated thereafter.

- Conduct a one-time recertification process in which all schools seeking continuing or new approval to admit foreign students reapply for approval and affirm their intent to adhere to the regulations governing record keeping, reporting and I-20 issuance, and to inform the Service of changes in designated officials and other pertinent changes.

- INS should not attempt to revalidate the educational legitimacy of schools applying for approval, but should rely on the Department of Education data bases of colleges and universities and of vocational schools for this purpose. Compatibility should be assured so that updating of information can be accomplished efficiently. (Private primary and secondary schools, and other schools not listed by the Department of Education will have to be treated individually.)

- The recertification process should be handled by a central source rather than by district offices, and a directory of approved schools should be created and distributed to consulates, district offices and ports of entry. If it is determined to be cost-effective, the data base of approved schools should be automated. The central file should be designed to have the capacity to differentiate schools by type and to list them by district. In addition, a mechanism to identify schools which do not submit periodic reports should be developed.

If the responsibilities of the schools are not clarified, if meaningful penalties for noncompliance are not adopted, or if the regulations are not enforced, attempts to develop information capable of supporting the principal INS objective of ensuring that foreign students are maintaining status will be frustrated. The following section addresses some features of a student information system and record keeping and reporting requirements for schools.

Nonimmigrant Student Information System.

As indicated earlier, it is a direct corollary of the principal objective of INS with respect to foreign students that the Service must have timely and reliable information about them. As became apparent during the Iranian crisis, INS does not now have the capability to ascertain the numbers of foreign students in the country, much less the capacity to identify them by name, nationality and school attended. The Nonimmigrant Document Control System (NIDC) and the Student Alphabetical Filing System (SAFS) proved to be inadequate in providing accurate and useful information.

A centralized, automated student information system was proposed within the Service in 1977, well before the Iranian crisis; district offices in Los

Angeles and Houston have also recommended automated information systems for students within the past two years. Most recently, in June 1981, a central office student task force submitted a feasibility study for a Foreign Student Accountability System. This study analyzed alternative systems (manual vs. automated, centralized vs. decentralized) and recommended a centralized, automated system as the most cost-effective means of providing timely information on foreign students.

The specific design of any information system should be determined by the purposes it is to serve and the projected uses of the information. In the case of a Nonimmigrant Student Information System, it seems that the purposes are to provide statistical information on the numbers of students in the country by nationality and school and to provide information about whether individuals are maintaining bona fide student status. As the feasibility study of the student task force concluded, a centralized, automated system seems best suited to these purposes.

The system should be kept as simple as possible to minimize costs and error, and it should clearly be compatible with (and, indeed, a module of) the overall NIDC system in whatever form it will be developed in the future. The data elements should include student name, nationality, school (by number and/or District), and student date of birth or identifying number. It might also be desirable to enter employment authorization, and date and reason for termination. The system should have the capability to flag individuals presumed to be out of status as an aid to investigators in the field attempting to verify an individual's claim to student status. Any additional data elements proposed should be scrutinized and justified in relation to the purposes of the system.

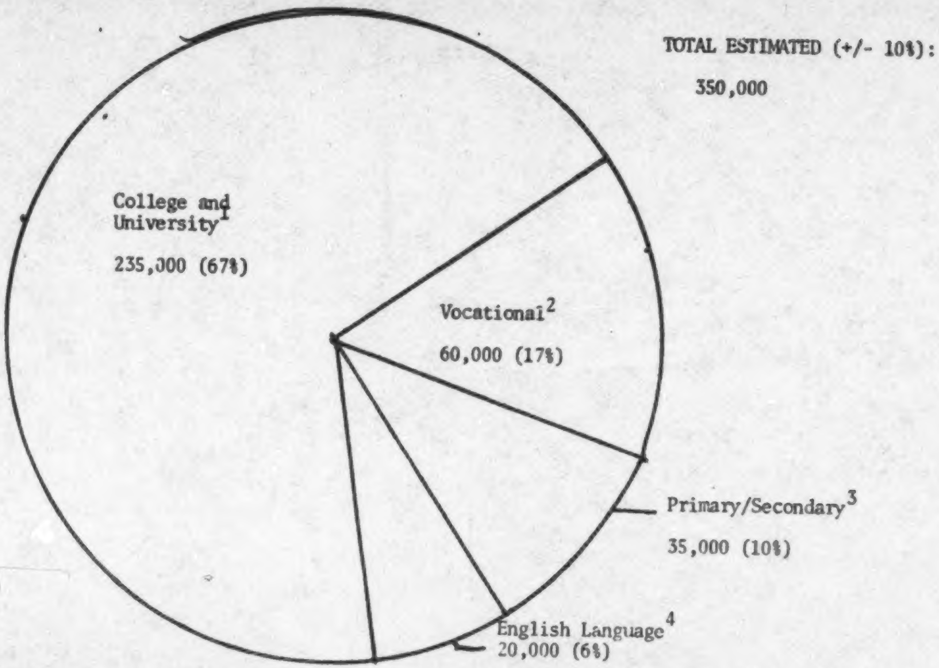
As indicated in the previous section, there is a statutory requirement that schools report on students attending. Currently, they are required to report F-1 students who terminate by forwarding the I-20B to the Service. The feasibility study proposed that lists of students be sent to all schools periodically with a request that they be updated and returned to a central location for updating the information system. Instead of this proposal, it is recommended that schools be required to report, within 30 days after each registration period, all F-1 students who have terminated (graduated, transferred, or dropped out) and all new students registered. The Service may wish to prescribe the form and format of this report. Alternatively, flexibility could be maintained in format, permitting schools to submit computer tapes or computer-generated or manual lists. This procedure would permit a systematic, centralized updating of the information system and, because it is keyed to the registration period of the schools, would minimize the reporting burden. Conversations with officials at OMB and at the National Association of Foreign Student Advisors revealed no objection to this process.

As discussed earlier, INS must depend on the schools to maintain certain information. Much of this is already maintained on all students by most schools for their own internal purposes -- such as student address and telephone number, student status (full time/part time), date of matriculation, degree program and major, expected date of completion. Other information specific to foreign students which should be maintained by the schools includes visa type, employment authorization, and termination date and reason (if known). Visa type is particularly important since there are foreign students in many nonimmigrant categories. According to the "Open Doors" report published by the Institute of International Education, in 1979-80 82% of foreign students in 2,950 U.S. colleges and universities were F-1 students, 7.6% were Js, 6.4% were "other", and 4% were refugees. Authority for INS officers to examine school records on individual students suspected to be out of status should be reaffirmed, and schools should be required to release student addresses and telephone numbers upon request.

APPENDIX

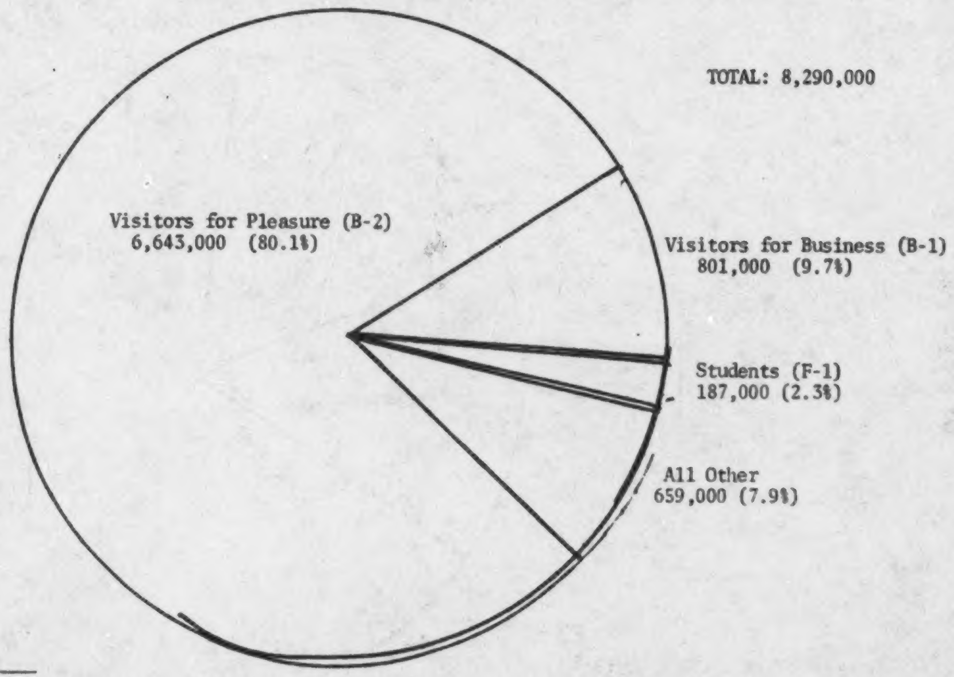
Table 1. Estimated Number of Nonimmigrant (F-1) Students in the U.S., 1979-80

By Type of School



Sources:
1. "Open Doors" Report, Institute of International Education, 1980.
2. INS Survey, 1980; estimated fraction of total post-secondary student population.
3. INS Survey, 1980.
4. Special Study, Institute of International Education, 1979.

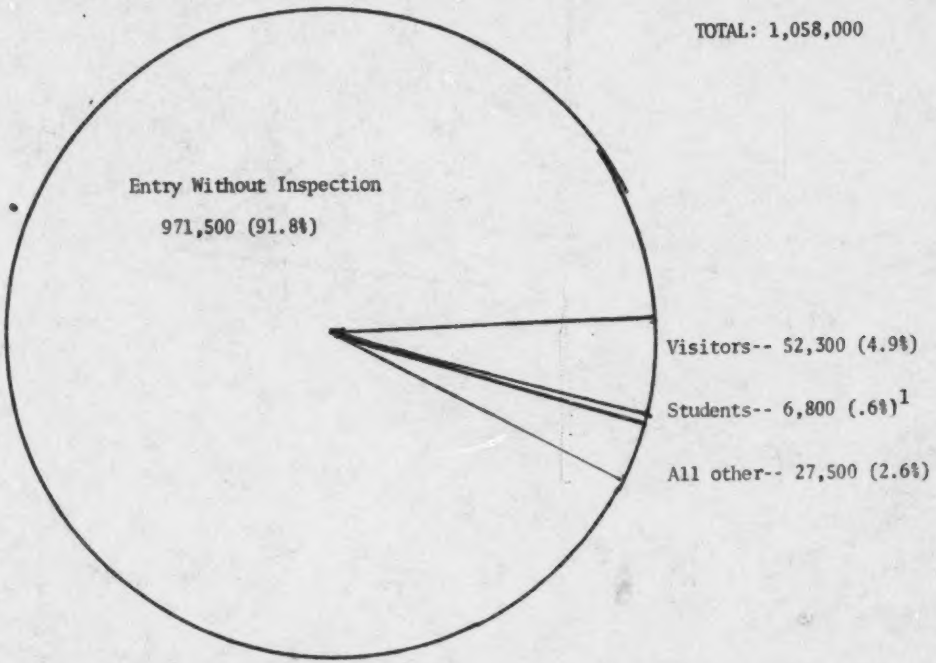
Table 2. Nonimmigrants Entering the U.S., 1978
By Classes Under Immigration Law



Source: INS, 1978 Statistical Yearbook, Table 4. Returning resident aliens (1,054,000) not included.

Table 3. Deportable Aliens Located, By Status at Entry, 1978

(Source: INS, 1978 Statistical Yearbook, Table 30)



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[1] In 1978, 259 nonimmigrant students were deported and 1,604 were required to depart. (1978 Statistical Yearbook, Table 29.)

Table 4. Iranian Student Status Verification Project

Source: Summary Report, May 18, 1981

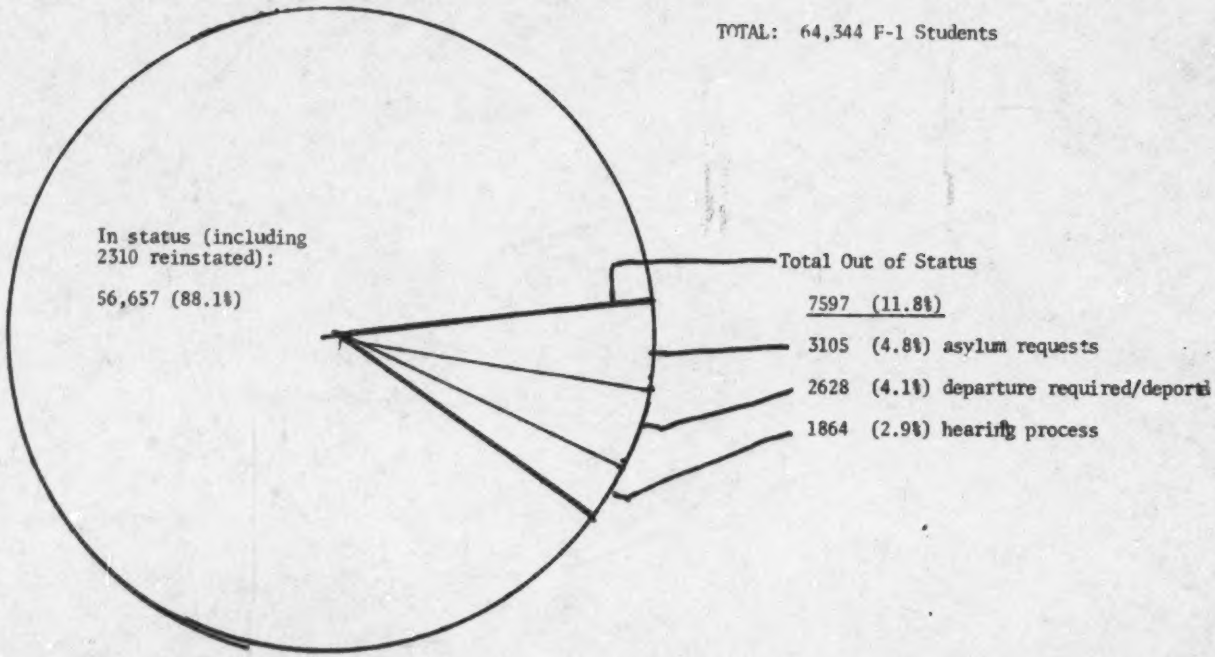

Table 5. School Transfer and Employment Authorization Applications Number of Adjudications Completed and Percentage Denied, 1978-1980.

(Source: INS, G-23 Statistics)

	1978 Completed (% Denied)	1979 Completed (% Denied)	1980 Completed (% Denied)
School Transfer Applications[1]	49,000 (3.1%)	49,000 (3.1%)	51,000 (6.7%)[3]
Employment Authorization Applications[2]	33,000 (14.5%)	39,000 (13.8%)	34,000 (19.4%)[3]

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1. Transfers adjudicated as a percent of total completions: 1978, 3%; 1979, 2.7%; 1980, 2.9%.

2. Employment authorization adjudications as percent of total: 1978, 2.1%; 1979, 2.2%; 1980, 2.0%.

3. The increaed denial rate in both categories for 1980 may be due in part to the greater scrutiny given to the student program as a result of the Iranian crisis.

(Note: Transfer Applications include Exchange Visitors (Js) as well as F-1 Students. Employment Authorization Applications include requests for "practical training.")

Senator SIMPSON. Mr. Olson.

STATEMENT OF HEATHER OLSON, NATIONAL ASSOCIATION OF FOREIGN STUDENT AFFAIRS

Ms. OLSON. On behalf of the National Association of Foreign Student Affairs, I would like to thank the chairman for this opportunity to summarize the written testimony that was previously submitted for the record.

The subject of foreign students in the United States is one which is subject to much misinterpretation. Contrary to the beliefs of some, the primary role of the foreign student in the United States is not to bolster sagging enrollments in American institutions; it is to provide students and faculty with the opportunity to interact with their foreign counterparts, whose basic assumptions and values often differ from their own. It also enables American students to receive instruction from leading specialists from all parts of the world and allows U.S. researchers to employ talents of qualified people from all nations.

The foreign student program, however, is not without its problems, one of which concerns document control. Some aspects of this problem are caused by the unnecessary adjudication of matters by the Immigration and Naturalization Service, which could be handled by reports from the institutions.

As pointed out in Dr. Catron's testimony, such matters as transfer of schools and work authorization could best be handled on campuses, with notification to the Service. This would necessitate prompt action on the part of the Service on reports received from institutions, and would also require accurate recordkeeping on the parts of institutions and the Service.

Over the past several years, the expressed goal of the Immigration and Naturalization Service has been to decrease the amount of paperwork facing district offices involved in processing routine applications for F-1 students. Flexibility which is currently not available to the Service for delegating authority to campus officials for work authorization and the report of school transfers must be made available to them through legislation.

NAFSA shares with the Government a deep concern about the balance between controls over foreign students and their freedom to carry out their educational programs. Laws and regulations about foreign students should be designed to promote the continuation and growth of foreign student programs. At the same time, the national interest demands that participants in foreign student programs be limited to those who are qualified to benefit from the educational programs offered, who are motivated to devote their principal activities to the pursuit of their educational goals, and who are willing to abide by the minimal and reasonable controls placed upon them in the furtherance of the national interest.

NAFSA believes that the interests of students, educational institutions and the public are compatible and can best be served by a system which allows maximum freedom to students and schools, but which insures that students who fail to maintain a full course of study as defined by their institutions are promptly identified to Immigration by the school and that Immigration act promptly and uniformly against such students to cause their departure from the country or a change in their immigration status.

Such a system would place the primary responsibility for maintenance of status on the student, the responsibility for reporting within carefully defined guidelines on the schools, and the responsibility for enforcement on Immigration. Each of the three parties in such a system of controls must be required to fulfill its obligations thoroughly. Since Immigration is not staffed or organized to act on the reports of schools, students who are so inclined are encouraged by lack of enforcement to ignore the rules and to disappear into the larger society as undocumented aliens, and some schools are encouraged to think that such reports are unimportant.

The key to preventing such abuse is prompt, uniform and fair enforcement by the Immigration and Naturalization Service of minimal controls on students and schools. Except for the requirement that foreign students maintain a full program of study and for some minimal and reasonable controls over employment of foreign students to prevent negative impact on the labor market, foreign students should be treated like other students and should be subject to the same laws, regulations and expectations as all other students.

Schools would then be able to offer educational benefits to students, with minimal interference from the Government in the educational process, foreign students can profit from their educational experience here and can best serve the public interest through their economic, political, educational and cultural contribution to this country, and Immigration can fulfill its obligations to the public by ensuring that foreign student programs are limited to those participants who are qualified and motivated to profit from their educational programs here.

Thank you.

Senator SIMPSON. Thank you very much, Ms. Olson.

[The prepared statement of Ms. Olson follows:]

PREPARED STATEMENT OF HEATHER F. OLSON

The National Association for Foreign Student Affairs (NAFSA) is a professional association devoted to all aspects of international educational interchange. Its nearly 4,000 members include a majority of U.S. colleges and universities and their advisers of foreign students and scholars, foreign admissions personnel, teachers of English as a second language, advisers to U.S. students on study abroad and representatives of national and community organizations that offer programs and services to foreign visitors.

As the major U.S. professional organization active in international educational interchange, and thus concerned with all aspects of foreign student and scholar affairs in this country, NAFSA is involved in a variety of activities related to the Immigration and Nationality Act (INA). NAFSA is in a position to view the effects of the Act on the lives of individuals studying and working in American institutions of higher learning as well as on the institutions in which foreign students and scholars are enrolled. Most of the school officials in academic institutions who have responsibilities specified in the Act and its attendant regulations are NAFSA members.

NAFSA maintains close liaison with the Immigration and Naturalization Service, the Department of State, and the Department of Labor, all of which are responsible for administering various aspects of the Immigration and Nationality Act. Because NAFSA members communicate regularly with these agencies, they are uniquely able to assess the workings of the Act and of the agencies responsible for its implementation. It is from this perspective that this position is presented.

Although the media would lead the public to believe that the main purpose of foreign students in the U.S. is to save some floundering institutions from bankruptcy and to bolster the sagging enrollments of others, the historical purpose of international educational interchange is still valid.

Educational institutions view the international exchange of persons as beneficial because it provides students and faculty with opportunities to interact with foreign counterparts whose basic assumptions and values are often different from their own. It enables students to receive instruction from leading specialists from all parts of the world and allows U.S. researchers to employ the talents of qualified people of all national origins. Interactions of this kind can produce the enlarged knowledge and enhanced understanding that educational institutions are responsible for promoting.

From the viewpoint of the nation as a whole, international educational exchange provides many significant benefits in addition to its contributions to the education of our citizens. These include the establishment of relationships with leadership groups in countries throughout the world, enhanced understanding of the United States on the part of people in many countries, familiarization of people in many countries with the American political and economic systems, including commercial opportunities here, and a contribution to the economic and social development of countries whose general development the U.S. has determined to be in its own national interest.

Foreign students represent only 2.3 % of all nonimmigrants admitted to the U.S. and as shown by Dr. David North in his report entitled "Nonimmigrant Workers in the U.S.: Current Trends and Future Implications" their employment would have a minimal impact on the labor market. The probable minimal negative impact of easing controls on foreign students in colleges and universities may be best exemplified by a 1975 G.A.O. report entitled "Better Controls Needed to Prevent Foreign Students from Violating the Conditions of Their Entry and Stay While in the U.S." Of the population studied 86% of the individuals in violation of their F-1 status were supposed to be in types of institutions other than colleges, universities, or seminaries. That foreign students in colleges, universities and seminaries constituted only 14% of the violations in the population studied lends support to many of the recommendations made to INS in "The President's Management Improvement Council Report on Foreign Students in the U.S.", prepared by Dr. Bayard Catron, concerning less restrictive regulations on employment and transfer of foreign students.

While considering possible changes in regulations concerning foreign students it should be pointed out that at the present time all students who come to the United States under Section 101 (a) (15) (F) of the Immigration and Nationality Act, to study in any field at any level, are classified as F-1 students. The F-1 visa requirements for students in all educational programs are the same, and the law is to be applied to them uniformly. There is an assumption under the law of a uniformity in the services provided to the students by the institutions they attend, of a uniformity in the definition of "academic term," and of a uniform ability on the part of the institutions to monitor their students' enrollment as required by the Immigration and Naturalization Service. However, this uniformity does not exist in fact.

Institutions currently authorized to issue Form I-20 to prospective students vary in type from elementary and secondary schools to vocational and technical schools to proprietary English language schools to colleges and universities. The ages and academic background of the students also vary widely from one type of program to another, as does the duration of the course of study. The disparities are of such magnitude that serious questions have been raised about the adequacy of the single visa category.

Students who are enrolled in elementary or secondary schools rarely have the level of maturity anticipated by the law which requires them to maintain a full course of study throughout the academic terms (fall through spring), refrain from accepting part-time employment without previous authorization from the Immigration Service, apply for permission to transfer schools and, in certain circumstances, apply for extensions of their permission to stay in the U.S. In some cases students in English language programs may have the maturity but lack the levels of comprehension in the English language necessary for them to understand the regulations applicable to them. In instances when institutions feel that students are unable to meet these responsibilities due to lack of maturity or knowledge, the institution may assign professional personnel to monitor their compliance with the law. However, in many elementary, secondary, vocational, technical or proprietary English language schools, there are no personnel with these professional responsibilities. This creates problems for the students, the institutions and the Immigration Service. Since there appears to be a problem with the law, as well as with the institutions and students, a differentiation between the regulations affecting students in programs in a variety of schools mentioned above, and in colleges and universities appears to be called for.

It should be noted that the purpose of the recommendation is to build a framework in which these students can meet their visa requirements legally and effectively and which will be understandable to the personnel in the institutions which they attend. The purpose of this differentiation is not to remove benefits from these students but to remove unworkable regulations of thich apparently they have been running afoul.
The recommendations for returning to duration of status, for notification of transfer rather than adjudication, and approval of off-campus employment by foreign student advisers appear reasonable when applied to the populations of students in colleges and universities who have proven their ability to accept responsibility for their maintenance of status. It also appears reasonable to introduce differentiation in visa and immigration classification for students in colleges and universities and those in other types of programs as has been done in the "efficiency package."

One major reason for NAFSA's support of the concept of different immigration classifications for students in colleges and universities and those in other types of schools is to enable the Attorney General and the Immigration and Naturalization Service to rework and simpligy the reporting structure for those institutions other than colleges and universities which accept foreign students. The current reporting structure would be retained for colleges and universities and with it the responsibility for monitoring the students' course of study, attendance, etc, currently required by regulations. NAFSA recommends a greater degree of authority and autonomy be given to officials of colleges and universities to make determinations which are currently rigidly defined within the regulations, NAFSA recognizes that such matters must be detailed in regulations rather than written into the law. However, the flexibility recommended is not currently available, as the Immigration and Naturalization Service states that authority cannot be delegated by the Attorney General without legislative authorization. The Association recommends that designated officials in colleges and universities be empowered by regulations to do the following:

1. authorize off-campus part-time employment during the school year and full-time during vacation periods in cases of economic necessity caused by an unforseen change in the student's financial circumstances as defined and evaluated by the campus official;
2. authorize practical training;
3. authorize study-related summer and vacation employment without the necessity to show financial need or unforseen change in financial circumstances and without deducting the time from a subsequent period of practical training. (Study-related employment undertaken full-time in lieu of an academic program during a regular school term such as is provided in cooperative work/study programs or internships would continue to be considered practical training, and the time spent in such employment would be deducted from the maximum permissible period of practical training.);
4. authorize a student attending a school on a quarter or trimester calendar to follow a flexible academic calendar by allowing him to take his "vacation" in any of the four quarters or trimesters of a year rather than limiting him to summer vacations.

Over the past several years the expressed goal of the Immigration and Naturalization Service has been to decrease the amount of paperwork facing district offices involved in processing routine applications for F-1 students. Recent alternatives tried by the Service have proved unsuccessful. Lack of substantiating documents acceompanying applications to the Immigration Service often require the return of the paper to the student and consequent resubmission. NAFSA is aware of the burden this represents for the Immigration Service, much of which could be alleviated by granting certain authority to campus officials.

Campus officials in colleges and universities are responsible professional persons who are able to deal fairly with the kinds of matters suggested above. They are the ones who are closest to the students and who are most concerned with their interests. They also have access to more complete records and information concerning students and, therefore, may be in a better position to make valid judgments on such matters than are INS officers. Granting campus officials this kind of authority would relieve the Immigration Service of an immense amount of paperwork and adjudications, thus freeing those officials to devote their attention to other pressing matters. The flexibility offered by these suggested changes would generate an enormous amount of good will on the part of students, many of whom will be future leaders in their home countries. The additional privileges and responsibilities would encourage in students a respect and concern for laws and regulations which are rational and not unduly rigid and will allow students to contribute toward the support of their educational programs. It would enable students to obtain without excessive restrictions the practical work experience they need to augment their theoretical academic studies.

NAFSA shares with the government a deep concern about the balance between controls over foreign students and their freedom to carry out their educational programs unfettered by restrictions which are irrelevant to the educational process. We begin with the assumption that the continuation and growth of foreign student programs in the U.S. is in the national interest because of economic, political, educational and cultural benefits which foreign students bring to this country. Therefore, laws and regulations about foreign students should be designed to promote the continuation and growth of foreign student programs. At the same time, the national interest demands that participants in foreign student programs be limited to those who are qualified to benefit from the educational programs offered, who are motivated to devote their principle activities to the pursuit of their educational goals and who willingly abide by the minimal and reasonable controls placed upon them in the furtherance of the national interest.

We believe that those minimal and reasonable controls should be directed toward insuring that:

1. Persons admitted to the U.S. as students maintain status as bonified students pursuing full-time programs of study towards an identified educational goal, and that those who fail to maintain such status are promptly and regularly identified through INS for corrective action;

2. INS maintains records on students to know who they are, where they are studying, and when they terminate their studies or otherwise fail to maintain full-time student status.

3. INS acts promptly, uniformly, and fairly against students who fail to maintain full-time status and against schools which fail to submit the minimal reports required;

4. The public is assured that any minimal negative impact on the labor market are more than offset by the economic, political, education and cultural benefits which foreign students bring to the U.S.;

5. The controls can be administered uniformally and regularly with a minimum amount of effort and expenditure on INS.

We further believe that laws should place less emphasis on controls and more emphasis on promoting the benefits of international educational interchange. To do so, the laws and regulations should be directed toward insuring that:

1. Students are treated with dignity and respect by all persons involved in administering the laws and regulations;
2. Educational institutions are minimally burdened with record keeping and reporting by INS consistent with the need of INS to know where students are and when they terminate or fail to pursue a full course of study;
3. Reporting to INS by institutions on individual students be limited to those matters which relate directly to a student's pursuing a full course of study, which are carefully and specifically defined in the regulations, and which do not violate the principles of confidentiality of information which are central to the educational relationship between the students and their schools; and
4. Educational judgements and decisions are made by schools and students, enforcement of controls is performed by INS, and all parties recognize and respect their separate and distinct ways in encouraging and promoting international interchange.

NAFSA believes that the interest of students, educational institutions, and the public are compatible and can best be served by a system which allows maximum freedom to students and schools, but which ensures that students who fail to maintain a full course of studies as defined by their schools are promptly identified to INS by the school and that INS act promptly and uniformly against such students to cause their departure from the country or a change in their immigration status. Such a system would place the primary responsibility for maintenance of status on the student, the responsibility for reporting within carefully defined guidelines on the schools, and the responsibility for enforcement on INS.

Each of the three parties in such a system of controls must be required to fulfill its obligations thoroughly. While it is true that some students and some schools have not taken those responsibilities as seriously as they should, the principle problem in the present system is the inability of INS to enforce the system. Since INS is not staffed or organized to act on the reports of schools, students who are so inclined are encouraged by lack of enforcement to ignore the rules and to disappear into the larger society as undocumented aliens, and some schools are encouraged to think that such reports are unimportant. The key to preventing such abuses is prompt, uniform and fair enforcement by INS of minimal controls on students and schools.

Except for the requirement that students must maintain a full program of studies and for some minimal and reasonable control over employment of foreign students to prevent negative impact on the labor market, foreign students should be treated like other students and should be subject to the same laws, regulations and expectiations as all other students. Schools will then be able to offer education benefits to students with minimal interference from the government in the educational process; foreign students can profit most from their educational experience here and can best serve the public interest through their economic, political, educational and cultural contributions to this country; and INS can fulfill its obligations to the public by insuring that foreign student programs are limited to those participants who are qualified and motivated to profit from their educational programs here.

Heather F. Olson, born November 23, 1947 in Atlanta, Georgia, received a Bachelor of Arts degree in English in 1970 and a Masters of Arts in English and Drama in 1972 from Georgia State University. Presently Mrs. Olson is Foreign Student Adviser at Georgia State University where she is also pursuing a Ph,d. in Educational Administration and Management. Mrs. Olson has been active in the National Association for Foreign Student Affairs (NAFSA) for six years. Mrs. Olson has served as Consultant to the Commissioner of the Immigration and Naturalization Service during the period February-May 1978 and currently serves as Chairman of a NAFSA region encompassing seven states and serves as Chairman of NAFSA's Government Regulations Advisory Committee.

Senator SIMPSON. David North, please.

STATEMENT OF DAVID NORTH, DIRECTOR, CENTER FOR LABOR AND MIGRATION STUDIES, NEW TRANSCENTURY FOUNDATION

Mr. NORTH. Thank you, Mr. Chairman.

Today I would like to discuss one segment of the nonimmigrant program conducted by the U.S. Government, that involving foreign students. There are a number of nonimmigrant programs, as you know, Mr. Chairman, and I must say that the movements of some nonimmigrant classes are monitored much more closely than others.

Nothing in the foreign student program matches the intense scrutiny applied to H-2 canecutters who work in the program discussed earlier today. These men are poor, black, and rural. They do some of the most frightful work in the United States, and their employers watch them like hawks.

Most of them are forced to live in barracks miles from civilization. If they fail to work at the piece work wages offered a couple of mornings in a row, they are fired, deported—with the cooperation of the Immigration Service—and blacklisted so that they never can work in the United States as an H-2 again, at least as a rural H-2.

In contrast, we have the foreign student program, which is administered in a much different manner. We have in fact two foreign student programs: the larger one involving F-1 students which is run exclusively by the Immigration Service, and the smaller one involving J-1 exchange visitors, managed by both INS and the International Communications Agency, formerly an arm of the State Department. The larger program causes more concern than the smaller one, but I think that both should be described, and I do so in my written testimony because there are some lessons to be learned from the J-1 program.

I would like to suggest that I agree with the two previous speakers that at least the academic part of the foreign student program is obviously an advantage to the United States and one with which we should be very careful. With the emphasis in mind that the academic program is clearly valuable, I would like to suggest one further change needed in the program, and that is the separation by INS of the academic from the vocational educational institutions, or perhaps the nonprofit organizations from the for-profit organizations.

There is a large overlap between the vocational schools and those teaching English in the for-profit category. Former INS Deputy Commissioner James Greene has suggested that the vocational institutions be monitored differently, presumably more vigorously than the academic institutions.

In their report, the GAO makes the same point.[1] They found, GAO did, that the vocational and language instruction institutions appear to generate a higher ratio of dropouts from legal F-1 status than the academic institutions did.

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[1] General Accounting Office, "Better Controls Needed to Prevent Foreign Students From Violating the Conditions of Their Entry and Stay While in the United States," report to the Congress by the Comptroller General of the United States, Report GGD-15-9, February 4, 1975.

Given that differential sort of problem, I suggest the use of some strategic thinking and some strategic focusing of resources to pay more attention to the ones that are more likely to cause problems.

I am also suggesting here a wholesale as opposed to a retail approach. In other words let us approach this from a systems technique. Let us look at the institutions that are more likely to cause problems, rather than focusing our attention on the individual foreign students. I think some of the things that Commissioner Meissner was saying along those lines were very heartening.

If there were to be a separation of these kinds of institutions, it would then be possible for INS to conduct more focused license review of the for-profit institutions. I am delighted to hear that all of the institutions will be reviewed, but I would rather have the focus on those who are, for instance, not members of the major academic organizations or colleges. I do not know that there will be that kind of differential approach, although INS is going to be doing a review of some kind.

Such institutions—and these are the vocational and language teaching programs—wishing to receive tuition payments from alien students could be required to certify that they provide training opportunities not available in the students' homeland, and to verify their standing as training institutions.

I would have them submit—and these are the nonacademic institutions—annual reports regarding the number of I-20's issued during the year, the number of alien students accepted as a result, the disposition of those students by category, the fees paid, if any, to overseas recruiters, a point mentioned earlier, and moneys expended on advertising the institution nation by nation, and copies of those advertisements.

In the review process, INS would have the option of denying licenses to institutions teaching frivolous subjects—modeling or karate and the like—subjects which are generally available overseas, such as English language instruction, and subjects which cannot be used in the alien's homeland. If there are no television sets in Burundi, for instance, Burundians should not be admitted to study TV set repair in the United States.

Similarly, in the licensing process INS could share information with other Government organizations licensing similar educational institutions.

My time is up, but in my written testimony, I do propose some nuts and bolts recommendations regarding the use of the I-20 as an enforcement tool. I found out from Ms. Olson a little earlier this afternoon that I am incorrect. They are not valid perpetually any more, and I am glad to find that that is not true. Also they are not free any more, they cost a dime.

That ends my testimony.

Senator SIMPSON. Thank you very much.

[The prepared statement of David S. North follows:]

PREPARED STATEMENT OF DAVID S. NORTH

Today I would like to discuss one segment of the nonimmigrant program conducted by the U.S. government, that involving foreign students. There are a number of nonimmigrant programs, as you know, Mr. Chairman, and I must say that the movements of some nonimmigrant classes are monitored much more closely than others.

Nothing in the foreign student program matches the intense scrutiny applied to the H-2 cane cutters, who work in the program discussed earlier today. Those men are poor, they are black, they are rural, they do some of the most frightful work in America, and their employers watch them like hawks. (Most are forced to live in barracks miles from civilization.) If they fail to work at the piece-work wages offered them a couple of mornings in a row they are:

- fired
- deported (with the cooperation of INS) and
- blacklisted (so that they can never work in the U.S. as an H-2 again).

In contrast, we have the foreign student program, which is administered in a much different manner. We have, in fact, two foreign student programs, the larger one involving F-1 students run exclusively by the Immigration Service, and the smaller one involving J-1 exchange visitors managed by both INS and the International Communications Agency (ICA), formerly an arm of the State Department. The larger program causes more concern than the smaller, but I think they both should be described, because there are some lessons we can learn from the J-1 program.

I would like to cover five aspects of these two programs in the next few minutes. First I will discuss the size of the populations involved, then the underlying dynamics of these programs, how the government manages them, some problems associated with the two programs, and then some suggestions for changes in them.

The populations. The numbers of foreign students arriving in the country has been increasing steadily in the F visa program, but has remained virtually stable in the J (or exchange visitor) program. In FY 1969, for example, there were 98,770 admissions in the F visa program (mostly for students, but about 8,300 for their spouses and children). By FY 1978 the comparable number had risen to 206,697.

In contrast, the J program recorded 62,476 admissions in FY 1969, a total that rose only to 75,097 in FY 1978.

Whereas INS maintains reasonably satisfactory data on the flows of nonimmigrants, it does not have equally good data on the stock of nonimmigrants--as the scramble to determine the number of Iranian students in late 1979, demonstrated. This is the case because the INS system for matching departure records to arrival records is not yet effective. In 1979, at the time of the Iranian student controversy, INS estimated that there were about 50,000 Iranian students out of a total of about 250,000 foreign students. (These estimates covered both the more numerous F-1 students as well as the J-1 students among the exchange visitors.)

In addition to the INS system for recording admissions of various classes of nonimmigrants, there is another estimating system produced by the Institute for International Education (IIE). Every year that New York-based organization polls the universities and two- and four-year colleges of the country regarding the number of foreign students enrolled. The most recent of these surveys (for 1980-1981) produced a total of 311,800 students, some 82.9% of whom were estimated to be F-1s and the balance divided among other nonimmigrant (primarily J-1), immigrant, and refugee categories.

Our sense is that both the IIE and the INS estimates understate the total number of F-1 and J-1 students in the country. There would be no disagreement from IIE on this point; that organization is well aware that a substantial number of institutions do not respond to their polls, and further that many F-1 students are attending educational facilities not covered by the IIE survey. The New York organization does not, for example, check on the foreign students enrolled in public or private primary or secondary schools, entities which are assumed to provide education to at least thousands of nonimmigrant students. Further, and more importantly, the technical and vocational schools, teaching everything from English as a second language to hairstyling, are excluded from the IIE survey.

The dynamics of the programs. Foreign students have become more numerous in the U.S. for the same set of reasons that their numbers have increased in France, Canada, the United Kingdom and other democratic, industrialized nations. The number of indigenous college and university students in those nations increased rapidly in the quarter century after World War II, and as the postponed education of servicemen was provided and, later, as the baby boom children passed into institutions of higher education. After the baby boom came a decrease in births, and hence, years later, a decrease in college enrollments; thus many colleges and universities in the developed world found themselves with excess capacity--at the same time that many Third World and oil-exporting nations found that they wanted to educate more people than their homeland institutions could handle--hence increasing foreign student enrollments.

Problems associated with the programs. The foreign student programs provide both benefits and problems to the U.S. It is clearly in our national interest to have a generation of foreign political leaders, many of them in the Third World, educated in our country; it is also, as I suggested earlier, helpful to U.S. institutions to have an additional supply of tuition-paying students. The problems come when the students drop out of legal status, and become, if you will, relatively elite members of the undocumented or illegal alien population.

One of the many pieces of information which we lack regarding the illegal immigrant population is the extent to which they arrived with student visas; we know that a substantial portion of the illegal alien population falls into the class of visa abusers, perhaps 40 to 50% of that population can be so classified. But how many are ex-students, and how many are ex-tourists?

I ran a little analysis on this point for the Select Commission last year, and compared the total admissions of tourists to the numbers apprehended, and examined comparable figures for foreign students. As I had expected there were far more ex-tourists arrested than ex-students, 64,100 (in FY 1978) as compared to 9,457. But what was more interesting were the comparisons between admissions and apprehensions for each class. For every 89 tourists admitted in FY 1978, there was one apprehension (of an ex-tourist), but for every 21 students there was also one apprehension. Thus the foreign student population is much more likely--on a percentage basis--to contribute illegal immigrants to the country than the larger tourist population, or the much more tightly controlled H-2 population (which produces a low percentage of violators).*

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*A partial explanation for the differential rates of apprehension for students and tourists is that students may initiate more contact with INS, and thus may be more susceptible to apprehension, than the tourists. Apprehensions often occur when aliens walk into INS offices to inquire about an immigration matter. If the adjudicator finds the alien to be in technical violation of the law, an arrest record (the I-213) will be completed on that person and added to the reporting system.

One of the reasons for this situation is the nature of the institutions empowered by INS to, in effect, cause the admission of foreign students. As a group, they range from the Harvards and Notre Dames of the nation to the fly-by-night, for-profit organizations that teach hairstyling and TV set repair in lofts above corner drug stores. INS treats them equally. Predictably, some of these institutions have taken advantage of the situation. At one level, it is a public or non-profit institution filling empty class room spaces with alien students (sometimes recruited for that purpose by agents of the institution). At another level, for-profit vocational institutions advertise their school overseas, emphasizing the visa as much as the curriculum. Worse, some of these schools, in effect, sell a nonimmigrant visa in return for a term's tuition. INS investigators can be assigned for days on end to "break" a single fraudulent marriage case, but similar time is rarely invested in revoking INS approval of visa-mill schools.

While I feel sure of the accuracy of these statements, the abuses of the F-1 program have not been explored systematically to our knowledge, except by a slim but useful study of the General Accounting Office, carrying a typical, lengthy GAO title:

> "Better Controls Needed to Prevent Foreign Students from Violating the Conditions of Their Entry and Stay While in the United States."*

Regarding the movement of some F-1 visa holders into illegal status, the GAO report summary stated:

> "School reports on file in the (Immigration) Service's New York and Los Angeles district offices and other records showed that many foreign students do not enroll in school, complete their studies or depart from the United States. The Service rarely investigates the school reports because of manpower limitations and the low priority it gives the problem of student violators. Even with low-key investigation efforts, the Service locates over 5,000 student violators annually."

Educational institutions have an obligation to report to INS when one of their F visa students drops out of legal status by either:

- o failing to register;
- o terminating attendance;
- o carrying less than a full course of study; and/or
- o failing to meet attendance standards.

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*Report to the Congress by the Comptroller General of the United States, Report #GGD-75-9, February 4, 1975.

At the time of the GAO study, there were backlogs of 20,000 such reports awaiting investigation (which generally do not take place) in the New York district office, and 2,000 in the Los Angeles office. GAO did not make a comparison between 22,000 pending cases in these two district offices and the number of F-1 students which had been admitted to study in the two cities, but the percentage must be a substantial one given the fact that there were 107,495 F-1 admissions nationwide in 1975, the year of the GAO report.

GAO conducted a survey of a sample of the reports and found that "eighty six percent of the 933 students who never registered or who terminated attendance before completing their studies were attending, or were to enroll in vocational, English language or public /presumably primary and secondary/ schools."

This GAO finding underlines the wide-spread belief within the Immigration Service that F-1 students who come to this country to attend four-year colleges or graduate schools are less likely to drop out of status--and certainly less likely to quickly become illegal--than the students admitted to vocational and English language programs, particularly those admitted to attend the private-for-profit institutions.

Possible Changes. The major enforcement reform needed in the foreign student program relates to the institutions, particularly the private-for-profit ones, that seek the admission of F-1 students. What is needed is a wholesale approach to the problem, dealing with the U.S. educational institutions, rather than a labor-intensive, retail scrutiny of individual students.

There is evidence from current program statistics that INS has begun to focus more attention on screening new institutions seeking the power to issue the I-20, but not yet on revoking that power from institutions that abuse it. This trend can be inferred from INS data on school applications adjudicated. The mini-table below shows the number of school applications filed, the number approved, and the number denied in the three recent fiscal years:

Fiscal Year	No. of Applications Filed	Number Approved	Number Denied	% Denied
1977	767	731	36	4.7
1978	1,149	1,023	126	11.0
1979	1,262	1,001	261	20.7

Source: INS form G-23.5

No data are available on the composition of these institutions over the years, but all else being equal, INS is apparently being more careful in granting the I-20 issuing power to educational institutions. (In its response to an inquiry of the Select Commission, INS pointed out that it is devoting, on average, one officer hour to each new application for the right to issue the I-20.)

Other evidence of INS paying more attention to regulating the institutions running foreign student programs lies in the change in INS operating instructions on this point. Formerly, the district offices were instructed to conduct "periodic reviews" of the approved educational institutions involved, but the word "periodic" caused some confusion, so INS amended the operating instructions to indicate that the reviews were to be conducted for each institution every two years.*

Statistics are not available on INS revocations of the power to issue the I-20,** but the sense of INS Central Office staff is that the District Offices rarely take this course of action.

One fundamental change needed in this field is the separation by INS of the academic from the vocational educational institutions, or the nonprofit from the for-profit institutions. Former INS Deputy Commissioner James Greene has suggested that the vocational institutions be monitored differently (presumably more vigorously) than the academic institutions.*** The previously cited GAO report on this subject**** found that vocational (and language instruction) institutions appear to generate a higher ratio of dropouts from legal F-1 status than academic institutions.

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*Secured in telephone conversation with Robert Coglin, INS Adjudications, June 11, 1980.

**The INS G-23 series of workload reports is a sheaf of pages, each with many entries. Revoking the power to issue the I-20 is not noted in this otherwise exhaustive reporting system.

***Mr. Greene spoke at a Select Commission consultation in Washington on May 22, 1980.

****Better Controls Needed to Prevent Foreign Students

If a separation of these kinds of educational institutions were made, it then would be possible for INS to conduct a more focused license review of the for-profit institutions. Such institutions wishing to receive tuition payments from alien students could be required to certify that they provide training opportunities not available in the students' homeland, and to verify their standing as a training institution. They would be required to submit annual reports regarding:

- the number of I-20s issued during the year;
- the number of alien students accepted as a result;
- the disposition of those students, by category: those still enrolled, those graduated, and those who dropped out of status (institutions with high dropout rates would be subject to special scrutiny);
- the fees paid, if any, to overseas recruiters;
- monies expended on advertising the institution, nation-by-nation, and copies of those advertisements.

In the review process, INS would have the option to denying licenses to institutions teaching frivolous subjects (modeling, karate), subjects which are generally available overseas (English language instruction), and subjects which cannot be used in the alien's homeland (if there are no television sets in Burundi, for example, Burundians should not be admitted to study TV set repair in the U.S.). Similarly, in the licensing process, INS could share information with other government organizations licensing similar educational institutions.

The I-20 could be changed from an unnumbered form, valid perpetually, given free to institutions, to a numbered form, good for one year, and provided to the schools for a $10 reimbursement each. This single change would cause the educational institutions to handle their part of the nonimmigrant admissions process with more care--and at the same time generate reimbursements on the order of $2,000,000 a year, which would support the substantial amount of licensing and investigative activities needed in this field.

Institutions that fail to file their annual reports, or otherwise fail to meet INS standards, would be denied the right to buy (and issue) I-20s in the following year.

Both nonprofit and for-profit educational institutions can be expected to protest tighter regulations, and the reimbursement, but these institutions are receiving a major boon from the government--the right to swell their enrollments with nonimmigrants--and these institutions (unlike most of the other beneficiaries of government decisions regarding migration) are paying nothing for these benefits.

Although the Exchange Visitor (J visa) program is structured like the F visa program, in the decentralization of decision-making regarding individual applicants, there appears to be no need for reform in this field. The number of admissions has been flat for years (and is currently running at a quarter of the level of the F visas), the number of institutions is much more limited than in the foreign student program, and, most importantly, there is no significant evidence of abuse of this program by either the institutions or large numbers of the individual exchange visitors.*

In closing, I would like to call to the Committee's attention a technique for eliminating one of the public costs caused by air-borne illegal immigrants--the expense of sending them home after they have been apprehended.

My suggestion--spelled out in an appendix to this testimony--is a simple one, namely that all nonimmigrants (other than diplomats arriving by air) be required to have with them, on arrival, a non-refundable round-trip airline ticket. If subsequently apprehended, they would have the ticket, and this would save INS the cost of sending them home--which now runs some $6,000,000 a year. This provision, while saving INS considerable funds, would harm no legitimate nonimmigrant, as they would need the return trip ticket anyway--the only people who would suffer financially would be the visa abusers. The suggestion, I might add, would be a bonanza for the airlines, as they would receive tens of millions of dollars in non-interest-bearing loans, in effect. These return tickets would be refundable under only two sets of circumstances, adjustment by the nonimmigrant to immigrant status, and death.

Unfortunately the previous Administration could not, or would not, focus on this notion--perhaps the Committee could ask the current leadership of the Justice Department to comment on this proposal.

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*For more on this program, see David S. North, Nonimmigrant Workers in the U.S.: Current Trends and Future Implications (Washington: New TransCentury Foundation, May 1980), pages 93-126.

APPENDIX

The Nonrefundable Return Airline Ticket for Airborne Nonimmigrants: A Proposal

A substantial percentage of illegal migrants to the U.S. are visa abusers (VAs); that is, persons who come through ports of entry bearing genuine passports and U.S. visas, who subsequently stay beyond their alloted time, or violate the terms of their visas (usually by accepting unauthorized employment). It is generally accepted within INS that roughly 25% to 40% of the illegal alien population falls into this category. It is thus a smaller population than those who enter without documents.

Many, probably most of these visa abusers, arrive by air. Vining's work suggests that about 200,000 illegal migrants arrive by air each year. Returning apprehended airborne visa abusers to their homeland is an expensive process, since only a small minority of those expelled by air pay their own way. In recent years INS has spent approximately $6,000,000 a year to expell illegal aliens by air, and, in many cases, otherwise deportable aliens are not, in fact, deported late in the fiscal year because INS has exhausted its alien travel funds.*

It should be noted that some visa abusers appear to enter the country planning to stay (contrary to what they told the U.S. consular official when applying for the visa), and others drift into illegal status without planning to do so. We have no data on the sizes of these two subgroups. We do sense, however, from reviews of INS apprehension statistics, from the North-Houstoun report, and other sources that visa abusers, in comparison to EWIs are:

- o better paid workers,
- o more likely to live in cities,
- o better educated,
- o more likely to use tax-supported programs,
- o likely to be in the nation longer before apprehension, and are
- o much less likely to be apprehended.

It is also more likely that the visa abusers will appear in family groups and spring from the middle classes of the sending nations.

That visa abusers, as a class, appear to have a different demographic profile from EWIs is logical. They have surmounted a different series of hurdles from the EWIs on their way to illegal status in the United States. The visa abusers have, by definition:

- o secured a passport from their own nation;
- o purchased an airline ticket;
- o secured a nonimmigrant visa from an official of the U.S. government (the most common visa is the B-2 (tourist) and the next is the F-1 (student)); and
- o been admitted to the nation at a port of entry.

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*Daniel Vining, "Net Migration by Air: A Lower Bound on Total Net Migration to the United States," (Philadelphia: University of Pennsylvania, Working Papers in Regional Science and Transportation (No. 15a), March 1980). In that paper, he estimated annual net migration by air at approximately 500,000. Since approximately three-quarters of the 400,000 legal immigrants to the U.S. arrived by air in the period 1969-1978 (derived by subtraction from INS Annual Report, Table 5), this suggests net illegal migration by air to be in the neighborhood of 200,000 a year.

There are, in other works, four control points that must be passed by each potential visa abuser. The first, that of passport issuance, is the function of the VA's own government, and beyond the control of the U.S. government. The other three control points offer some options for additional intervention by this government.

Strengthening the visa issuance and the inspection functions are both possible and desirable, if difficult to achieve. We have addressed these issues elsewhere, but it should be noted that both of these courses of action would have substantial costs, in terms of tax dollars and in inconveniencing legitimate tourists.

Is there a way of using the ticket issuance function -- which the U.S. can control -- to discourage visa abuse? We think so. As a matter of fact, we think there is a system that would:

- discourage planned visa abuse
- encourage some potential visa abusers to return home;
- reduce costs to the Treasury (by providing deportable-alien-funded air travel home rather than funding that travel with tax dollars);
- create a useful, continuing data system on the sources of, and trends in, visa abuse at no cost to the taxpayers;
- provide financial assistance to all international airlines serving the United States;
- not, in any way, discourage legitimate tourism; and
- not cost taxpayers a dime.

The proposal is a simple one: all nonimmigrants wishing to enter the U.S. by plane would be required to buy a roundtrip plane ticket, but the return portion of the ticket would not be refundable. One could use the return portion only to fly home.* Since nonimmigrants are, by definition, persons planning to return to their homeland, no nonimmigrant could protest this arrangement. Some classes of nonimmigrants, such as diplomats and foreign journalists could be excluded from this requirement.**

As background, it should be noted that many intending visa abusers present the roundtrip ticket to the consular official to indicate their intentions of returning home, and then cash it in either upon their arrival in the U.S. or at some future date. In many cases, that refund constitutes a major portion of the resources that potential VAs bring to this country. This is particularly true for those coming from long distances.

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*Those wishing to fly through the United States to another nation could do so, provided that the other nation was at least as distant from the United States as their homeland. Thus a London-New York-Dakar ticket would be acceptable, if the traveler had a valid Senegalese visa, but a London-New York-Ottawa ticket would not suffice. In the latter case, the passenger would need a London-New York-Ottawa-London ticket, with the New York-Ottawa-London leg nonrefundable, to be admitted to the United States. One of the few disadvantages of this scheme is that it might discourage visits to the United States of intending immigrants to Canada and Mexico, who want to tour the United States on their way to their new homeland; one suspects, however, that the numbers of such persons is limited.

**Additionally, since there are few nonimmigrants in the K and L classes, (fiances and multi-national employees), and since all Ks and many Ls are intending immigrants, they too could be excluded from this provision.

The principal objectives of the proposal are:

- to save the Treasury the travel costs associated with deporting airborne VAs, and
- to discourage visa abuse by making it more expensive.

The proposal could also supply data that we expect to be better than that generated by government systems on the subject (at no expense to the government) and to provide enough financial incentives to the airlines so that they will be willing to operate their part of the system.

The enforcement mechanisms are simple. After the system goes into effect, no nonimmigrants would be admitted at any U.S. airport unless they carry nonrefundable return tickets. Airlines wishing to carry nonimmigrants to the United States would be caused to issue such tickets (and to honor these arrangements) or they would risk the wholesale nonadmission of their nonimmigrant passengers.* Since INS is simply acting within its discretion as to what documentation must be provided to secure admission, no statutory changes are needed. And since U.S. funds are not involved, there is no need to seek appropriations.

How would the no-refund system bring about the advantages mentioned earlier? The most obvious element of the scheme is that it would double the travel cost for an intending VA. This would be a major detriment to an alien from a distant place, but a minor one for a potential VA from a nearby nation. Table 1 shows the lowest roundtrip airfares to the U.S. from a series of locations as of May 1, 1980. The additional cost to the VA would be half the fares noted.

The second principal advantage of the no-refund system would be the use of VA-purchased tickets to save tax funds which could be recycled to enhance INS enforcement efforts. Because non-immigrants would not be allowed to refund their tickets (and because they would be subject to penalties for not retaining the tickets), the non-immigrants would presumably tend to keep their tickets. If and when they fell into VA status, and were apprehended by INS, they would then have the airline ticket that would take them back to their own land.** Currently, more than 78% of the $7,700,000 a year spent by INS on travel for returning aliens (both deportees and voluntary departees) is devoted to air travel. Thus the system once in full operation could save millions of dollars a year now being spent on the expulsion of VAs.***

What would the airlines be asked to do? Airlines wishing to carry nonimmigrant passengers to the United States would be required to demand that such passengers hold roundtrip or appropriate onward airline tickets, and that the return or ovward portion of the tickets be nonrefundable. They would be expected to make no exceptions**** in this regard, which would pose no hardship to the airlines.

The carriers would be required to maintain a uniform data system, reporting the number of roundtrip or onward tickets issued, the number

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*One of the unintended consequences of this system may be that persons, unable to illegally migrate by air, may shift their business to the passenger liners, so a similar nonrefundable ticket arrangement would need to be worked out with them.

**Further, by causing the VAs to retain their tickets, they might be more likely to fly home voluntarily than if they had to purchase the tickets.

***A proposed recycling of alien travel funds is discussed in the addendum to this paper.

****Save for those authorized by an INS district director; refunds would be made only in instances of death or adjustment to permanent resident alien status.

Table 1

Lowest Available Roundtrip Airfare to the U.S. From Selected Foreign Cities on Scheduled Airlines, May 15, 1980

Cities	Carrier	Fare (in U.S.$$)
Kingston - Miami	BWI	138.00
Port-of-Spain - New York	PanAm	504.00
Lima - Miami	Braniff	594.00
London - New York	TWA	688.00*
Athens - New York	TWA	825.00
Hong Kong - San Francisco	PanAm	1298.00
Calcutta - New York	TWA	1333.00

Note: All fares subject to fluctuating local currency values. All fares are based on origination in foreign cities.

* Laker Airways offers a much lower fare, but efforts to contact them were unsuccessful.

Source: Telephone conversations with Pan Am, TWA, Braniff, British West Indies, and Eastern Airlines.

used, and the number not used. Ideally, these data would be required for each segment of the line's service to the U.S. (thus separate data would be generated for flights from Mexico City to San Antonio, Mexico City to New Orleans, Tampico to San Antonio, Tampico to New Orleans, etc.). The final dimension of the reporting system would be time, so in each case the number of three-month old unused tickets would be reported, the number six months old, nine months old, etc. The data would be recorded in a standard format on computer tapes, and then forwarded to INS for merging into a worldwide report.

The latter report would tell, at a glance, the relative and absolute incidence of unused return tickets for every airport in the world. It would be possible to monitor changes over time in the incidence of visa abuse, and to make appropriate adjustments in visa issuance and inspection procedures.

In our initial conversations with the representative of a major airline, we found that the airline was not enthusiastic about the prospect, essentially because it would mean that it would have to adjust its current business practices. The point was made that the remarkable computer systems which the airlines possess deal with reservations, rather than with ticket sales, and that their computers would have to be reprogrammed if this proposal were to be implemented.

The airlines of the world, however, would be richly rewarded by the proposed system. If there are approximately 200,000 new airborne VAs each year, and if each on average had to purchase a $250 non-refundable return ticket (which would take one from New York to Trinidad, for example) that would amount to a $44,000,000 interest-free loan to the airlines ($50,000,000 minus $6,000,000 worth of such tickets used for those expelled by INS). If the average return fare would be a little more, say the $344 currently quoted from New York to London, the airlines would have more than $62,000,000 a year in interest-free loans ($68,800,000 minus 6,000,000).

Assuming a very modest interest rate (10%), the proposal would pay the airlines $4.4 to 6.8 million a year the first year of operation, for adjusting their practices and their computers. If the volume remained as high the second year, the airlines would net between $8.8 and 13.6 million, and so on. An if interest rates were calculated above 10%, the returns to the airlines would increase accordingly.*

Addendum: INS Expulsion Patterns

INS has three basic patterns for the expulsion of apprehended aliens:

1. Mexican (and Canadian) nationals captured at or near the borders, are returned through the nearest port of entry, usually in INS vehicles, and usually without purchasing any transportation services. That accounted for about two thirds of those expelled (650,000 or so) in FY '79.
2. Mexican nationals captured in the interior have their choice of being returned to the border or being put on a plane to Mexico City. Currently INS records, but does not tabulate, the numbers in each of these two subclasses.
3. Non-Mexican nationals are placed in planes heading for their homelands.

Unfortunately data are not available for the second and third patterns, as such, but we do know that $6,000,000 of the $7,700,000 spent on alien travel in FY '79 was spent on airborne departures. Presumably most of the travel funds are spent to expell small numbers of persons caught in the interior, and relatively little is spent on removing the large numbers caught at the border. In a sense, then, the allocation of alien travel funds is the exact reverse of the allocation of enforcement funds. The latter are heavily concentrated on the border, but the former are heavily concentrated in the interior.

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*After this paper was written, I became aware of the visa waiver bill (H.R. 7125), which proposes to waive the visitor visa requirement for nationals of a number of nations that are unlikely to produce visa abusers (e.g., Western Europe and Japan). That program, which is aimed at decreasing the consular workload and increasing the tourist trade rather than enhancing enforcement, would make use of a couple of elements suggested here -- the nonrefundable return ticket, and the INS inspection authority as a device to cause the airlines to cooperate with the program. Far from enhancing law enforcement, though, the visa waiver program would eliminate the screening of potential visitors at the U.S. consulates, and, further, despite the elimination of some positions in the embassies, the proposal makes no provision for additional immigration inspectors. The visa waiver proposal suggests that a roundtrip, nonrefundable ticket be used in lieu of a visa in nations which do not (apparently) produce many visa abusers. What we are suggesting is that the roundtrip, nonrefundable airline ticket be required in addition to a visa in all nations. A combined approach, which I do not recommend, is obviously a possibility.

Freeing even a million dollars in alien travel funds, because of the proposed nonrefundable return ticket would allow INS to experiment with two strategies along the southern border:

1. Voluntary interior repatriation. With the exception of those who secure airline tickets to Mexico City, all Mexican nationals are simply turned loose at the border. Many seek to return to the U.S. the next day. The only buslift to the interior now operating runs from El Centro to Los Mochis (about 500 miles south of the Mexican border, on the Sea of Cortez). This operation, however, is only for those who are willing and able to buy their own tickets (only $15). Some 386 such bus tickets were purchased in March, 1980.

   One would suspect that were the bus tickets made available free and the offer made for travel to several other interior locations, that some of the discouraged illegal migrants would take advantage of the offer, thus relieving for a while some of the pressure on the border. A plan like this, is currently under consideration by INS.

2. Lateral border repatriation. For those Mexican nationals from the interior, who are caught at Chula Vista, for example, and who do not opt for the bus ride back to the interior, another technique could be used. They could be transported laterally along the border to a remote spot, such as Lukeville (Arizona) and repatriated at that point. This would be a discouraging prospect, and would cause some of the Mexican Nationals to accept the interior busride. Those who seek to return to the United States at Lukeville would do so under conditions which were less attractive, to the alien, than those at Chula Vista; their absence from the Tijúana area would also tend to to relieve some of the pressures at that point.

Obviously either of these strategies could be used without the introduction of the nonrefundable return ticket program (either through additional appropriations, or the transfer of funds now used for high unit cost expulsions by air) but the ticket proposal would, after a few months of operation, make such experiments possible without securing additional funds.

Senate **Simpson**. Again I have a roll call vote, and I would further inquire of my questions personally. So we will have a 10-minute recess and then come back, and then there will be a few minutes of questions. And I will join you in just a few moments.

[Recess.]

Senator **Simpson**. We just retrofitted a battleship with that vote, I think is what we just did.

So I do apologize, but that goes with the territory.

Some questions. I listened with great interest to all three of you because it is an area of significant great interest, and even though it is not a large number that we speak of, in my time on the Select Commission and as chairman of the subcommittee, it is one that gets the juices going, it really does, and especially I think the Iranian student issue.

A lot of mail has come to us with regard to that, and we weigh that knowing the intensity of that kind of feeling. But it does become a focal point. There are certain things that do in this highly emotionally charged arena, and that is one.

But certainly what you are in effect saying is that it is so important to remember that these universities and institutions that accept foreign students certainly serve an extraordinary role as an agent of cross-culture understanding of domestic and foreign students, of cross-pollination process. That is very important to me personally. I have seen it work.

So David North's suggestions for increased observation with regard to the foreign student program is, as usual, highly creative and interesting. I would be most interested in the views of the other two members of the panel as to your responses to the feasibility of such suggestions as modifying the I-20 form from an unnumbered form, which I understand now—I heard that interchange there. You might bring us up to date on the subcommittee.

Perhaps there is no longer any valid numbered form, but it is now costing one dollar.

Ms. **Olson**. It is $10 a hundred.

Senator **Simpson**. One dime. In other words, changing that or the possibility of altering that to a numbered form good for one year, and providing that the schools pay a sum for that, as well as the suggestion there for acquiring a nonrefundable round trip airline ticket for all nonimmigrants arriving by air.

What are your views? I would be particularly interested in Mr. Catron's and Ms. Olson's on that.

Ms. **Olson**. The I-20 form was revised in the past year. It is dated February 14, 1981. They are now serially numbered and they are logged out to institutions when they are purchased from the Government Printing Office. The forms I-20 are valid for the date indicated on them. A student is eligible to enter the country on or before the date stated, and the I-20 is not valid after that date.

The old I-20 were valid for 1 calendar year from the date on which they were signed. But this was changed when they were revised.

I think that Mr. North's suggestion of the $10 processing fee to pay to a visa office or to pay to Immigration has merit and some real potential. But I think that charging institutions $10 per I-20 would be counterproductive in that many institutions issue I-20's to students for a variety of purposes other than initial entry, example, they are frequently issued to students for returning home temparily. Some students get as many as four or five I-20's in 1 year. If they go to school in Florida and live in Jamaica, they may get a new I-20 every time they go home for a weekend. And charging $10 each time one of those is issued, when it is only used as a reentry permit, I think would be counterproductive.

However, I think it would not be prohibitive for students to pay some kind of a service fee on the processing.

Mr. **Catron**. I certainly favor the idea of user charges in general, where it is feasible and appropriate. I think there are many areas within INS where they are appropriate. The fee for adjudicating the naturalization examination for example, could well be raised to $50 or $75, given the nature of that benefit.

I tend not to favor pricing forms, although that certainly bears looking at. I think perhaps an alternative would be to charge some fee to the schools who wish approval to admit foreign students. I do not know what an appropriate fee would be, but if they are in fact reaping the benefits of the program in the sense that their tuitions are being augmented by foreign students coming in, it would be possible, as part of the certification process to have them pay some fee.

On the issue of the nonrefundable return air ticket, I think that is an excellent idea. I think that can and should be done.

Ms. **Olson**. I would agree with that, too, as a private citizen rather than as a spokesman for NAFSA.

Senator **Simpson**. That is a very important distinction. But that has intrigued me since it was first presented. It is such a basic thing, but that is sometimes what we lose track of in this labyrinth. But that does seem like the basic sort of thing that could be accomplished, is the person who is saying they are just temporary and they are going for business or whatever purposes—that does not seem to be an intrusion to me.

A couple of other questions of Mr. North. Do you feel that other institutions or individuals, such as employers or tourists themselves, should be subject to some kind of a fee to cover INS processing? I would be interested in your views.

Mr. **North**. I had not thought about it in connection with tourists. I have noticed that as one leaves Mexico City, for instance, one pays a fee simply to get out of that airport, and that is true in a number of other instances, too. So I must say that in terms of a fee for a tourist visa, that is something I had not thought about.

I do think that there are some fees levied by INS on employer petitions, and if they are not it is an exception. There are a number of such situations where fees are levied, and I see no reason why we should not have some kind of a fee, and presumably relating to not just the pieces of paper but to the number of nonimmigrants involved.

Senator **Simpson**. Let me ask you, do you have any data regarding displacement of U.S. students by foreign students who are authorized to work?

Mr. **North**. I did some research on that, as you may know, Senator, a couple of years ago for the Labor Department. That was in the good old days when the Labor Department was still funding immigration policy research, which has come to a close. I examined a series of nonimmigrant classes, looking at the J-1's, F-1's, H-1's, H-2's, and L-1's.

I found rather thunderous labor market impacts of the H-2 program, particularly the agricultural H-2 program, and I think depressing ones. I, as you know, have a dim view of much of that program.

I did not find an awful lot of negative impact of the foreign students on U.S. labor markets, largely because they are not bonded. They can work anywhere they want. The restrictions on them are not such that they make them more attractive workers, whereas the restrictions on the H-2's do make them more attractive workers.

So the introduction of foreign student workers into a labor market—they are primarily involved in urban ones and obviously in places where there are large numbers of foreign students—is very much like the introduction of an equal number of American college students. I found that not particularly impressive nor particularly worrisome.

Senator SIMPSON. Do you have any comment on the proposals which have been made to broaden the authority of the schools to define and evaluate a foreign student's authorization to work?

Mr. NORTH. I think that is something that should be looked at carefully. I am really more concerned about—I do not want to resist your line of questioning, but I would like to say that I am more concerned about the use of the I-20 by some fly-by-night schools and by particularly proprietary schools as a technique for allowing someone to come into this country and stay illegally.

I think that is a much more significant problem than the passing impact on the labor market of foreign students in status, who hopefully will go home when they complete their degree. I am much more concerned about the use of some parts of this program as an entry vehicle for undocumenteds.

Senator SIMPSON. A final question. What is your response to the suggestion that the INS should return to a duration of status admissions of foreign students, which would authorize their stay for as long as they remain bona fide students in an approved course of study?

Mr. NORTH. I would like to look at that only in the context of the academic institutions, and I would be perfectly happy to see that as a tradeoff for a more vigorous scrutiny of the nonacademic institutions.

Senator SIMPSON. Dr. Catron, in your testimony you state that the legitimate interest in knowing what schools students are attending is better served and served far more cheaply by an information system than by adjudication. Could you elaborate for the record what you mean by an information system and how that system would operate, briefly, please?

Mr. CATRON. Yes. I said that in relation specifically to student transfers, but I think it applies more generally. INS must have certain minimum information about F-1 students, at least their name, nationality, and the school they attend. I think that an information system that provided that would be adequate, and the emphasis therefore could be decreased on laying hands on students, having them come into the INS offices.

So the information system would be centralized, it would be automated, it would be a subcomponent of the nonimmigrant document control system, and it would have a limited number of features. It wouldn't be an enforcement system. It would be an information system.

In addition, of course, I can't overemphasize the importance of holding the schools responsible for maintaining certain sorts of information. Schools are the institutional sponsors and I think that this is extremely important.

An attempt to develop a student information system without the recertification process, without the commitment to enforcing the regulations on noncomplying recalcitrant schools, will not be successful. But given that commitment, I think that this sort of information system would suffice.

Senator Simpson. Do you have a response to that, Ms. Olson?

Ms. Olson. Yes. Actually, I agree with him. I think that the Service's proposal of recertification on the forms I-17 for institutions authorized to accept foreign students is a very good one, and with some modifications to his proposals to Immigration, I think that institutions would be willing and able to provide the information that is being requested by the Service.

The basic information that is currently on the form I-20 would constitute a valid data base for the Service, and that information should be available from colleges and universities.

I would point out to you that, going back to what Mr. North was saying previously about the differentiation in schools, what can be expected from colleges and universities certainly would differ from what could be expected from vocational or proprietary or even elementary and secondary schools in the data keeping services concerning foreign students.

Senator Simpson. And what is the position of your organization, Ms. Olson, in the reaffirmation of the authority to examine school records on individual students suspected of visa violations and the requirement of schools to release student addresses and telephone numbers upon an INS request?

What steps might be taken to improve cooperation in that regard? And I would be interested in your views.

Ms. Olson. Currently our concern is the statement, the reaffirmation of the Immigration's right to this information, because in the regulation there is nothing written that authorizes Immigration to have access to anything other than the information concerning a student's name, country of birth, country of citizenship, date of birth, whether he's taking a full course of study, where he's enrolled in school—the information contained on the form I-20B.

I think Immigration has a valid right to information concerning foreign students, but it needs to be carefully detailed and published so that there are not abuses from district to district. At the present time there is very little uniformity in the enforcement of things from one district of Immigration to another, and what is being requested in Buffalo may be quite different from what is being requested in Atlanta.

Senator **Simpson**. Finally, is there concern among members of your organization that in view of the recent budget cuts in Federal assistance to U.S. students, student loan programs, both in terms of loans and grants, as well as in job programs and work projects, that there may be increased competition for jobs between foreign and U.S. students, who I think naturally are going to be concentrated in the same labor market?

Ms. **Olson**. I have not found any great concern in this area, for two reasons. One is that foreign students do not qualify for many of the types of work-study and financial aid available to American students. They simply, by definition, are not eligible for work-study programs.

And second, under the current regulations a foreign student, even with a work permit, is not eligible for employment which would displace a U.S. citizen. Any time an American student is in competition with a foreign student for a job, and they are equally qualified, the American student will get the job. I haven't seen competition of this sort.

At the present time it seems to be working quite equitably.

Senator **Simpson**. I would be interested, as you perceive it in the face of these recent things, whether you see a distinction or a difference that would be helpful, if you should perceive that. It really would—at least I would be interested personally.

Ms. **Olson**. I come from an institution where 87 percent of students are employed full or part time and this is the American students, not the foreign students. So that of the percentage of students that are foreign students, they may be in competition for some jobs, but it certainly appears that the American students are finding the work that they need.

Senator **Simpson**. One further question of Dr. Catron. What is your reaction to a change in current practice, which is the one which enables the foreign student and other nonimmigrants to adjust their status to immigrant once they are in the United States? In other words, the thought of discontinuing that practice and requiring such persons to first return to their homeland before making that request.

Mr. **Catron**. This was an issue that came up in my study, but I did not pursue it in the depth that I did some other areas. There is a provision, as you indicate, for adjustment of status from nonimmigrant to immigrant status.

As best I could tell, the information is very sketchy on this. As best I could tell, something like 10 percent of the foreign students may avail themselves of that adjustment in status. They do so, of course, primarily because they marry an American citizen. They don't usually do it on the basis of work.

I do not have a firm position on changing the adjustment of status practice. If 10 percent of the students adjusting status is deemed to be too great, then certainly you ought to consider requiring them to return to their home countries for a period of time, as the J's now are required to do. But if consideration is given to eliminating adjustment of status, it should be considered for all nonimmigrants not just students.

Senator **Simpson**. I thank you very much. You have been very helpful and your testimony is greatly appreciated. Thank you.

The final witness today is Norman Philion of the Air Transport Association, with regard to the visa waiver issue. And if you would, please feel free to proceed. I think you have a slide presentation to make, and we certainly will appreciate your going forward.

STATEMENT OF NORMAN J. PHILION, EXECUTIVE VICE PRESIDENT, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. PHILION. Thank you, Mr. Chairman. It's a pleasure to be with you.

For the record, my name is Norman Philion. I am the executive vice president of the Air Transport Association of America, which represents the scheduled airlines of the United States. I have a prepared statement for the record which I would like to submit, with your indulgence.

Senator SIMPSON. Without objection, it will be entered.

Mr. PHILION. Mr. Chairman, I appear on behalf of the airlines of the United States in support of the administration's proposal to waive visas for visitors from selected countries abroad. In the interest of your time and because I think the presentation we are about to share with you depicts the delay, the inconvenience and the frustration that are faced by visitors and potential visitors to this country at most of the major international travel markets abroad—this particular presentation was developed in late spring of this year, prior to the beginning of the peak travel season to the United States.

And what you are going to see transpired at consular offices at the U.S. Embassy in London. So with your permission, we will proceed with the slide presentation. It is very brief.

[A slide show was presented.]

Mr. PHILION. That concludes our brief presentation, Mr. Chairman. Again, the airlines, joined by all other elements of the U.S. travel and tourism industry, strongly urge favorable consideration of this legislation. We have been urging it for many years, and we think the time has come for its consideration.

Thank you.

Senator SIMPSON. Well, I certainly appreciate that, and the time indeed has come. And one of the significant parts of your little presentation there was the latter statement, that it certainly would do nothing to accomplish that on one end and not on both ends, when we are dealing with it. And that is what we are trying to resolve and will resolve, and this corrective effort will be encompassed in the draft of the legislation of the INS.

You did suggest that the penalty which has been proposed of $1,000 for each infraction be eliminated. How might we be assured that the airlines will comply with the regulations without that penalty?

Mr. PHILION. We think the strongest incentive would be to make clear in the legislation that any carrier, any airline that repeatedly neglects its responsibilities, which we are prepared to accept under this legislation, then the surest way to control that is to terminate the contract. No airline will be able to participate in this arrangement, the visa waiver program, as the legislation is drafted without being a party to a contract with the Federal Government. And we think the best incentive is to have a clear authority to terminate that contract immediately.

Our concern with the $1,000 penalty is because, based upon past experience with the Immigration Service, we think it will get into the bureaucratic clerk process, where $1,000 fines will be levied across the board for any number of very minor paperwork transaction problems.

Senator SIMPSON. With respect to the visa waiver legislation, do you think there is a danger to the national security at all because of the lack of clearance in a foreign country?

Mr. PHILION. I think, Mr. Chairman, that one of the things that comes out strongest in our slide presentation and from our personal observations at consular offices abroad is that a person who sends his passport into a U.S. consular office from 400 or 500 miles away is getting very little screening. I think you could see examples of that from the mail that is stacked up and the sheer effort to issue visitor visas as quickly as possible.

Now, so long as the U.S. Government can permit visitors to come here after applying through the mail, it indicates that they are getting a very careful screening when they arrive in the United States, and that is in fact the case. Under the law, as you know, there is a joint responsibility on the Attorney General and the Secretary of State on the admission of nonimmigrants. And the issuance of a visitor visa guarantees no entry into the United States.

The recipient of that visa has to be inspected and cleared by the Immigration Service at the port of entry. We think they are doing a reasonably good job at the airport and I think some of the numbers that were given to you by an earlier witness today, only 17,000 rejects at our airports of entry, in this day and age of massive international air travel, compared to half a million or more at the border points, is indicative of the kind of an inspection process that goes on today.

Senator SIMPSON. Do you think the absence of clearance in the foreign country will mean longer lines and longer time for clearance at our airport?

Mr. PHILION. It need not and we hope it would not. We have talked, after some hearings by the House subcommittee in New York last year, to a number of the immigration inspectors in the firing line at Kennedy Airport, and they said at the time they saw no need for any additional work as a result of visa waivers.

They still felt on a personal basis, a one on one basis, that they could handle that traffic without any delay.

Senator SIMPSON. Do other countries that are involved with appropriate, at least to them, clearance and waiver provisions, do they impose substantial penalties upon carriers for violations?

Mr. PHILION. Very few countries today have as restrictive requirements under law in terms of penalties imposed upon airlines. We could provide for the record—I do not have it here—those countries which do and those countries which do not.

[The material referred to follows:]

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NORMAN J. PHILION
Executive Vice President

December 14, 1981

Honorable Alan K. Simpson
Chairman, Immigration Subcommittee
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I greatly appreciated the opportunity to appear before the Subcommittee on November 30 to support the Administration's proposal to waive visas on a reciprocal basis for visitors coming to the United States from selected countries.

During the course of my testimony I was asked about the extent to which other countries impose substantial penalties on carriers in connection with the entry of non-immigrant and visitor travelers (page 244 of the transcript). I undertook to provide an answer for the record.

To the best of our knowledge from information available to us, no foreign country imposes a penalty similar to that contained in the Administration's visitor visa waiver legislative proposal for document controls relating to visa waivers. As a mater of fact, only Canada and the United States impose non-discretionary fines in the case of visitors arriving without a visa where a visa is required.

We would be pleased to provide any additional information within our means in this regard that the Subcommittee may need.

Sincerely,

Norman J. Philion
Executive Vice President

NJP:hw

Senator SIMPSON. I think I would be interested in that, if you would provide that.

Well, I thank you very much, Mr. Philion and your group. And yours is a very valid statement and it is going to be corrected.

Mr. PHILION. Thank you, Mr. Chairman. If I could add just one comment to some of your prior questions on user charges, we believe there is a need for user charges, particularly in domestic commerce in this country. And we pay, we think, our fair share.

When you think of international charges of the kind that you might be considering with respect to immigration or customs for that matter, bear in mind, please, that we operate to 70 foreign countries. The airline system, the international airline system and its customers would be seriously affected if the United States imposed a whole new series of user charges on international travelers, for whatever reason, and it was copied, as it would be, by most of the other nations of the world.

One of the prior witnesses earlier mentioned the fact that in leaving certain countries you now pay a departure tax. We have that same tax or had it until recently as a part of our airport and airways program, where every departing passenger pays $3. That statute, as you know, expired. But the administration has proposed its reinstitution and we expect it will be before too long.

Thank you.

Senator SIMPSON. Well, thank you for that comment. And again, we appreciate your being here.

This will conclude the hearing. The next one is on December 11th, as we continue and will conclude this month the hearings on immigration and refugee policy reform. Thank you so much.

[Whereupon, at 5:20 p.m., the subcommittee was adjourned, to reconvene on December 11, 1981.]

PREPARED STATEMENT OF NORMAN J. PHILION

My name is Norman J. Philion. I am Executive Vice President of the Air Transport Association of America, which represents U.S. scheduled airlines. I appreciate this opportunity to appear before the subcommittee to discuss the Administration's proposed legislation to waive the visitor visa requirement for business and pleasure travelers from selected countries.

Among our members are 19 U.S. flag airlines that provide scheduled air service between the United States and some 70 other nations. These airlines, together with other elements of the U.S. travel and tourism industry, have long advocated procedures to simplify and facilitate the entry of travelers visiting the United States. The airlines have urged enactment of visitor visa waiver legislation because they believe that the visa requirement is unnecessary in many cases, that its elimination would spur travel to this country, and that it would provide a means of competing more effectively in the international travel market.

The proposed legislation would permit the Secretary of State and the Attorney General, acting jointly, to waive the nonimmigrant visa requirement for tourists and business visitors from qualifying countries who do not plan to remain in the United States longer than 90 days. Enactment of the visa waiver proposal would be consistent with several of our national and international policy objectives and commitments, including the Facilitation Annex to the Chicago Convention on International Civil Aviation, the Helsinki Final Act of the Conference on Security and Cooperation in Europe, and the Final Report of the Select Commission on Immigration and Refugee Policy issued last March.

Because current U.S. visitor visa requirements are unnecessarily complex and burdensome, they are a negative factor in the selection of the United States as a travel destination in today's highly competitive international travel market. The waiver of visas for business and pleasure visitors from selected countries will do much to overcome that negative factor and will result in an increase in the numbers of international travelers to the United States.

There have been various reservations in the past about easing visitor visa requirements. These reservations have ranged, in different periods of our history, from national security concerns to more recent concerns about a potential increase in illegal alien problems. The pending visa waiver proposal has safeguards which address current concerns. For example, recipients of visa waivers would be required to possess roundtrip, non-refundable tickets. They would also be required to execute affidavits confirming their eligibility for temporary admission under applicable provisions of the Immigration and Nationalty Act, and to pledge not to seek employment while in the United States. The affidavit would then serve as a two-part immigration entry and departure control document -- the first copy being collected upon the visitor's arrival in the United States, with the second being collected by an airline upon the visitor's departure. The forms would then be quickly matched by the Immigration Service through a newly developed computerized system.

Under this proposal, the airlines would be required to enter into a contract with the Attorney General in order to bring visitors without visas to the United States. The airlines would be responsible for issuing the roundtrip, non-refundable tickets, for insuring transportation to the traveler back to the point of origin of the ticket, and for collecting the departure control documents and returning them to the Immigration Service. Additionally, the airlines will be responsible for assuring that international travelers are aware of the limitations governing entry into the United States under the visa waiver. Moreover, the airlines will be responsible for returning visitors found ineligible at the port of entry.

In addition to those substantial financial and procedural responsibilities, the pending proposal also contains burdensome penalty provisions applicable to the airlines. They would impose a $1,000 penalty on the airlines for each and every contractual infraction, however minor, even those relating to simple paperwork infractions. The airlines believe the proposed penalty provisions are excessive on the one hand, because they could be imposed in cases involving thousands of individual paperwork transactions each day, and are unnecessary on the other, because there is a better way to achieve contractual compliance. That is, terminate the contract of any carrier that regularly fails to adhere to the rules. The airlines would suggest, therefore, that the need for such penalty provisions be reexamined, and that, at the very least, a provision be included which would allow mitigation of penalties under appropriate circumstances. Attached to our statement is a copy of the Administration's visa waiver legislative proposal together with our draft language to amend it for for this purpose.

Despite the recognized benefits of international tourism to the economy of the United States, current U.S. visitor visa requirements deter travel to this country, are unnecessary in many cases, and are at odds with the practices of nearly all other countries competing for international travel. The pending visa waiver proposal would help address such problems in a positive way, and is fully consistent with the principles set forth in the recently enacted National Tourism Policy Act.

Moreover, the proposal would save the Department of State 121 positions overseas at an estimated $913,000 during the current fiscal year, with savings during fiscal year 1983 at an estimated $3,778,000. Visitor travel to the United States is projected to continue to increase in future years and government savings will increase accordingly. We believe, as does the Department of State, that it is wasteful to devote the staff and time simply to stamp visitor visas in the passports of citizens of selected countries which present few, if any, problems when entering the United States. We certainly concur with the comments of the Secretary of State on March 24, 1981, before a House subcommittee when he said, "...these changes are essential if we are to meet our statutory consular... requirements within the resources requested."

As noted, visitor travel benefits the United States economy. Last year, for example, visitors traveling to the United States on the scheduled airlines, increased by 13 percent and these travelers, plus those arriving by other transportation modes, spent an estimated

$12 billion while in the United States, producing over $1 billion in federal, state and local tax revenues.

Present visitor-visa law is at odds with the practices of nearly all other countries genuinely interested in promoting tourism. For example, twenty European countries waive visas for United States visitors, and the citizens of these countries find it difficult to understand why the United States does not reciprocate. They resent our visitor visa requirements.

Conclusion

The basic objective of facilitation is to secure, to the maximum degree consistent with the public interest, unimpeded passage of international travel. The current U.S. visitor visa requirement is inconsistent with this objective. It is also inconsistent with congressionally mandated public policies designed to promote travel to this country by visitors from abroad, and to stimulate airline competition in the international marketplace.

Elimination of unnecessary and cumbersome barriers to the entry of visitors to the United States is long overdue. Favorable consideration of the visa waiver amendment is needed to assure that a major barrier to visitor travel to the United States is minimized.

The Administration's proposed legislation has been carefully constructed to provide safeguards against abuse and, with the exception of the proposed penalty provisions, represents a realistic and viable visa waiver plan. We strongly urge favorable consideration by the subcommittee of this visitor visa waiver legislation.

Attachments

Administration's Proposed Visa
Waiver Legislation

Attachment 1

A BILL

To amend the Immigration and Nationality Act, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by adding at the end thereof the following new paragraph:

"(11)(A) The requirement of paragraph 26(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly, in the case of an alien who --

"(i) is applying for admission as a nonimmigrant visitor for business or pleasure for a period not exceeding ninety days;

"(ii) is a national of a country which extends, or is prepared to extend, reciprocal privileges to citizens and nationals of the United States;

"(iii) before such admission completes such immigration forms as the Attorney General shall by regulation prescribe;

"(iv) has a round-trip, nonrefundable, nontransferable, transportation ticket issued by a person who has entered into an agreement with the Attorney General guaranteeing transport of the alien out of the United States at the end of the alien's visit; and "(v) has been determined not to represent a threat to the welfare, safety, or security of the United States.

"(B)(i) For the period beginning on the effective date of this paragraph and ending on the last day of the first fiscal year which begins after the effective date of this paragraph, a country shall be considered to be within the purview of subparagraph (A)(ii) of this paragraph only if, in the last two full fiscal years preceding the effective date of this paragraph, such country had an average nonimmigrant visa refusal rate, as determined by the Secretary of State, of less than 2 per centum (and no higher than 2.5 per centum in any one of those two years). For the purposes of this subparagraph, the term "average nonimmigrant visa refusal rate" means the number of nonimmigrant visas refused under section 212(a) and 214(b) for applicants of the nationality of such country at consular offices in said country as a percentage of the total number of such visa applications actually filed.

"(ii) For each fiscal year following the period specified in subparagraph (B)(i), a country considered to be within the purview of subparagraph (A)(ii) during such period shall not be considered to remain within the purview of subparagraph (A)(ii) unless, in the two fiscal years immediately preceding such fiscal year, it had either an average rate of exclusion and withdrawal of application for admission or an average rate of violation of nonimmigrant status, as determined in either case by the Attorney General which exceeded 1 per centum of the persons admitted to the United States in waiver of visa cases under this paragraph (or which exceeded 1.5 per centum of such persons in any one of those two years): Provided, That in determining the rate of violation of nonimmigrant status the Attorney General shall exclude from consideration those persons who remained for more than ninety days in the United States for reasons beyond their control or for trivial overstays (less than fifteen days), if there was no intention to remain permanently in the United States. Determinations required by this subparagraph shall be made as soon as practicable after the end of each fiscal year.

"(iii) If, at the end of any fiscal year following the period specified in subparagraph (B)(i), a country not previously considered within the purview of subparagraph (A)(ii) shall have a nonimmigrant visa refusal rate, as determined in the manner provided for in subparagraph (B)(i), of less than 2 per centum, such country shall be considered to be within the purview of subparagraph (A)(ii) for the next following fiscal year and shall thereafter be treated in the manner specified in subparagraph (B)(ii).

"(iv) If, at the end of any fiscal year following the period specified in (B)(i), a country previously considered within the purview of subparagraph (A)(ii) but which lost that status under the provisions of subparagraph (B)(ii) but which again shall have nonimmigrant visa refusal rate, as determined in the manner provided for in subparagraph (B)(i), of less than 2 per centum, such country shall be considered to be within the purview of subparagraph (A)(ii) for the next following fiscal year and shall thereafter be treated in the manner specified in subparagraph (B)(ii).

"(C) Notwithstanding the provisions of subparagraphs (A) and (B) of this paragraph, no alien shall be admitted without a visa pursuant to this paragraph if he has previously been so admitted and failed to comply with the conditions of his previous admission.

"(D) Notwithstanding any of the other provisions of this paragraph the Attorney General and the Secretary of State, acting jointly, may, for whatever reason, including the national security, refrain from waiving the visa requirement in respect of nationals of any country which may qualify therefor under this paragraph or may, at any time, rescind any waiver previously granted under this paragraph.".

(b) Section 214(a) of the Immigration and Nationality Act (8 U.S.C. 1184(a)) is amended by changing the period at the end thereof to a colon and by adding thereto the following: "Provided, That no alien admitted to the United States without a visa pursuant to section 212(d)(11) shall be authorized to remain in the United States as a nonimmigrant alien for a period exceeding ninety days from the date of this admission.".

(c) Section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)) is amended to read as follows:

"(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 210(b)) who hereafter continued in or accepts unauthorized employment prior to filing an application for adjustment of status; (3) an alien admitted in transit without visa under section 212(d)(4)(C); or (4) an alien admitted as a temporary visitor for business or pleasure without a visa under section 212(d)(11).".

(d) Section 248 of the Immigration and Nationality Act (8 U.S.C. 1258) is amended by inserting after the word "except" the following: "an alien admitted as a temporary visitor for business or pleasure under section 212(d)(11),".

(e) There shall be added immediately following the heading "CHAPTER 8 -- GENERAL PENALTY PROVISIONS" a new section above which will be set forth a heading reading:

"FAILURE TO COMPLY WITH CONTRACT GUARANTEES", and which shall read as follows:

"SEC. 270. (a) Every person transporting nonimmigrant aliens pursuant to section 212(d)(11) shall enter into a contract with the Attorney General guaranteeing that (1) such person shall issue aliens covered by that section round-trip, nonrefundable, nontransferable, transportation tickets; (2) such person shall not refund the cost of the return part of the ticket; (3) such person shall not cancel the return part of the ticket; (4) such person shall be responsible for insuring transportation of such alien back to the country to which the return trip ticket was issued; and (5) such person shall collect from each such alien, at the time of departure, the required copy of the form or forms prescribed by the Attorney General in subparagraph (iii) of section 212(d) (11) (A) and return it to the Immigration and Naturalization Service in such manner and within such time as the Attorney General shall by regulation prescribe.

"(b) If it appears to the satisfaction of the Attorney General that such person has defaulted on any of the guarantees in paragraph (a) such person shall pay to the collector of customs for the customs district in which the port of arrival is located the sum of $1,000 for each and every default.

"(c) As used in this section the term 'person' includes, but is not limited to, the owner, master, agent, commanding officer, charterer, or consignee of any vessel or aircraft.".

(f) The provisions of this Act shall be effective on the date of their enactment into law.

The Air Transport Association of America Suggested Amendment to Subsection (e) of the Administration's Visa Waiver Proposal

Attachment 2

"(b) Such a person defaulting on any of the guarantees in paragraph (a) may be required to pay to the Customs District Director for the appropriate customs district the sum of $1,000 for each default. The Attorney General, after examining all the circumstances surrounding the default, including appropriate mitigating circumstances, shall determine whether such payment is warranted.

Or

"(b) The Attorney General may terminate the contract of such person for repeated failure to perform the requirements of subsection (a).

Or

both under (b)

APPENDIX

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

DEC 4 1981

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This Department wishes to provide the following views for inclusion in the record on two bills currently pending before your Committee, H.R. 4514, an Administration bill,

> "To amend the Immigration and Nationality Act to allow the waiver of certain nonimmigrant visa requirements,"

and H.R. 1872, a bill,

> "To waive the visa requirement for aliens visiting Guam for not more than 15 days."

The Department strongly recommends enactment of H.R. 4514, but would have no objection to enactment of H.R. 1872.

Under present law, all foreign nationals (except Canadians, Bahamians and British citizens resident in Bermuda, the Cayman Islands and the Turks and Caicos Islands) must obtain a visa in order to enter the United States. H.R. 4514 would authorize the Secretary of State and the Attorney General to waive the visa requirement for any alien (1) seeking admission to the United States for a period of not more than 90 days as a nonimmigrant visitor, and (2) who is a national of a foreign country which has a refusal rate of less than two percent for applicants seeking such admission and which extends, or is prepared to extend, reciprocal privileges to nationals of the United States.

H.R. 1872 would exempt any alien seeking to enter Guam as a temporary visitor for business or pleasure for 15 days or less from existing U.S. requirements that he be in possession of (1) a valid passport; and (2) a valid nonimmigrant visa or border-crossing card. However, such an alien would have to be a national of a foreign country designated by the Secretary of State on the basis of reciprocity or on the basis of his determination that such designation would promote the foreign policy of the United States. Furthermore, the stay of such an alien in Guam could not be extended, nor could his status be changed, under other provisions of the Immigration and Nationality Act.

The International Travel Act of 1961, as amended, directs the Secretary of Commerce to, "encourage the simplification, reduction or elimination of barriers to travel, and the facilitation of international travel generally," and to "develop, plan and carry out a comprehensive program. . .to stimulate and encourage travel to the United States by residents of foreign countries. . . ." The National Tourism Policy Act of 1981 establishes a national tourism policy, one of whose objectives is to, "encourage the free and welcome entry of individuals traveling to the United States in order to enhance international understanding and goodwill consistent with immigration laws. . . ." Both proposed bills are consistent with the intent of these Acts, and would increase the effectiveness of the Department's program to encourage tourism to the United States from abroad.

Research performed by and for the Department's former United States Travel Service indicates that the anticipation of "difficult entry procedures and/or difficulty in obtaining a visa" inhibits some foreign nationals from visiting this country as tourists. Studies conducted in 1977 in five of the countries which would be affected by H.R. 4514 showed that an average of 13.6% of potential tourists to the United States anticipated difficult entry procedures or difficulty in obtaining a U.S. visa. The number of visitors reporting such difficulty ranged from a high of 25% for French visitors to a low of 4% for visitors from the Netherlands.

Each potential visitor deterred by existing visa requirements from traveling to the United States represents a loss of more than $650 in U.S. foreign exchange earnings (transportation fares excluded).

Most Western European countries eliminated the visa requirement for American and other tourists in the post World War II era. Furthermore, the overwhelming majority of applicants for admission to the United States from Western Europe qualify for entry. Despite these facts, the United States has not reciprocated.

In a number of countries, the volume of visa applications is so large that significant backlogs build up, and there are long delays in processing applications. This creates inconvenience, and, in some cases, undue hardship to the applicant. Too often, the result has been negative publicity for the United States and frustration and ill will on the part of the potential visitor. Ill will is especially unfortunate inasmuch as a large number of applicants for U.S. visitor visas are our relatives, our friends and our business associates.

Both H.R. 4514 and H.R. 1872 would simplify entry procedures for nationals of most of those countries which have eliminated the nonimmigrant visa requirement for citizens of the United States. They would probably also encourage certain countries which still require visas for U.S. citizens to accord our nationals reciprocal treatment. In November of 1978, the Japan-Hawaii Economic Council adopted a resolution calling for "Elimination of Visa Requirements for Japan-U.S. Visitors, Both Ways, and Short-Term Tourists." Japan currently requires arriving American tourists to be in the possession of a valid visitor visa.

Both H.R. 4514 and H.R. 1872 are compatible with the tourism provisions of the Helsinki Accords, Annex 9 of the Convention on International Civil Aviation, and the recommendations of the World Tourism Organization on tourism facilitation. The Helsinki Accords pledge the parties, among other things, to "gradually simplify and flexibly administer procedures for exit and entry," to "ease regulations concerning movement of citizens from other participating states," and to "endeavor gradually to lower, where necessary, fees for visas and official travel documents." Annex 9 recommends that "Contracting States (of which the U.S. is one) extend to the maximum number of countries the practice of abolishing, through bilateral arrangements, or unilateral action, entrance visas for temporary visitors." The World Tourism Organization recommends that, "Member States. . .examine the possibility of abolishing, on a reciprocal basis, or unilaterally, entry visas for temporary visitors seeking admission for periods of short duration," and that, "visas, where eliminated, should not be replaced by other procedures which would complicate the entry of tourists."

The Department of Commerce strongly prefers H.R. 4514, because it would benefit the tourism sector of the entire country, not just that of Guam, and because it would apply to a greater number of potential U.S. visitors than would H.R. 1872. Nevertheless, we recognize that enactment of H.R. 1872 would facilitate tourist travel to Guam and create jobs for Guamanians without aggravating the illegal alien problem; therefore, we have no objection to its becoming law.

Opportunities for employment on Guam are not sufficiently abundant to attract large numbers of illegal aliens. Furthermore, because the Territority is located far from the U.S. mainland and other possessions, any aliens who do enter Guam cannot automatically gain access to Hawaii, Alaska, other territories or possessions or trusts, or the mainland. In 1980, more than 256,940 foreign visitors arrived in Guam by air. More than 86% of these arrivals were from Japan, a nation with a high standard of living and reasonably secure patterns of employment. Only 1% of Japanese visitors to Guam in 1976 (the latest year for which data are available) traveled on to the mainland and only 3% traveled on to Hawaii.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

Irving P. Margulies
for Sherman E. Unger
General Counsel

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

11 DEC 1981

Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This Department wishes to provide the following views for inclusion in the record on legislation currently pending before your committee, H.R. 4514, an Administration bill,

> "To amend the Immigration and Nationality Act to allow the waiver of certain nonimmigrant visa requirements."

The Department strongly recommends prompt enactment of H.R. 4514. Under present law, all foreign nationals (except Canadians, Bahamians and British citizens resident in Bermuda, the Cayman Islands and the Turks and Caicos Islands) must obtain a visa in order to enter the United States. H.R. 4514 would authorize the Secretary of State and the Attorney General to waive the visa requirement for any alien (1) seeking admission to the United States for a period of not more than 90 days as a nonimmigrant visitor, and (2) who is a national of a foreign country which has a refusal rate of less than two percent for applicants seeking such admission and which extends, or is prepared to extend, reciprocal privileges to nationals of the United States.

The International Travel Act of 1961, as amended, directs the Secretary of Commerce to, "encourage the simplification, reduction or elimination of barriers to travel, and the facilitation of international travel generally," and to "develop, plan and carry out a comprehensive program. . . to stimulate and encourage travel to the United States by residents of foreign countries. . . ." The National Tourism Policy Act of 1981 establishes a national tourism policy, one of whose objectives is to, "encourage the free and welcome entry of individuals traveling to the United States in order to enhance international understanding and goodwill consistent with immigration laws. . . ." The proposed bill is consistent with the intent of these Acts, and would increase the effectiveness of the Department's program to encourage tourism to the United States from abroad.

Research performed by and for the Department's former United States Travel Service indicates that the anticipation of "difficult entry procedures and/or difficulty in obtaining a visa" inhibits some foreign nationals from visiting this country as tourists. Studies conducted in 1977 in five of the countries which would be affected by H.R. 4514 showed that an average of 13.6% of potential tourists to the United States anticipated difficult entry procedures or difficulty in obtaining a U.S. visa. The number of visitors reporting such difficulty ranged from a high of 25% for French visitors to a low of 4% for visitors from the Netherlands.

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In a number of countries, the volume of visa applications is so large that significant backlogs build up, and there are long delays in processing applications. This creates inconvenience, and, in some cases, undue hardship to the applicant. Too often, the result has been negative publicity for the United States and frustration and ill will on the part of the potential visitor. Ill will is especially unfortunate inasmuch as a large number of applicants for U.S. visitor visas are our relatives, our friends and our business associates.

H.R. 4514 would simplify entry procedures for nationals of most of those countries which have eliminated the nonimmigrant visa requirement for citizens of the United States. It would probably also encourage certain countries which still require visas for U.S. citizens to accord our nationals reciprocal treatment. In November of 1978, the Japan-Hawaii Economic Council adopted a resolution calling for "Elimination of Visa Requirements for Japan-U.S. Visitors, Both Ways, and Short-Term Tourists." Japan currently requires arriving American tourists to be in the possession of a valid visitor visa.

H.R. 4514 is compatible with the tourism provisions of the Helsinki Accords, Annex 9 of the Convention on International Civil Aviation, and the recommendations of the World Tourism Organization on tourism facilitation. The Helsinki Accords pledge the parties, among other things, to "gradually simplify and flexibly administer procedures for exit and entry," to "ease regulations concerning movement of citizens from other participating states," and to "endeavor gradually to lower, where necessary, fees for visas and official travel documents." Annex 9 recommends that "Contracting States (of which the U.S. is one) extend to the maximum number of countries the practice of abolishing, through bilateral arrangements, or unilateral action, entrance visas for temporary visitors." The World Tourism Organization recommends that, "Member States. . .examine the possibility of abolishing, on a reciprocal basis, or unilaterally, entry visas for temporary visitors seeking admission for perods of short duration," and that, "visas, where eliminated, should not be replaced by other procedures which would complicate the entry of tourists."

The Department of Commerce believes that H.R. 4514 is in the national tourism interest, and urges prompt and favorable action by your committee.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

for Sherman E. Unger
General Counsel